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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 572.

THE FIRST NATIONAL BANK OF PRINCETON, ILLINOIS,
ET AL., APPELLANTS,

CHARLES E. LITTLEFIELD, TRUSTEE IN BANKRUPTCY
OF ALBERT O. BROWN ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

FILED MARCH 9, 1913.

(23,084)

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a United States Circuit Court of Appeals for the Second Circuit.

In the Matter of ALBERT O. BROWN et al., Bankrupts; THE FIRST National Bank, Princeton, Ill.; William H. Simpson, Frederick J. Bullen, Samuel C. Scotten, Scotten & Snyder, Appellants.

Transcript of Record.

Appeal from the District Court of the United States for Southern District of New York.

Printed under the direction of the Clerk.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Sep. 25, 1911. William Parkin, clerk.

b *Statement.*

Dec., 1908, Petition by Bank of Princeton.
Jan'y, 1909, " " Wm. H. Simpson.
Jan'y, 1909, " " Fred J. Bullen.
Feb'ry, 1909, " " Samuel C. Scotten.
Feb'ry, 1909, " " Scotten & Snyder.
March, 1909, Testimony concluded.
May 25, 1909, Report of Spl. Master dated ——.
June 28, 1909, Order U. S. District Court Reversing Report.
July 9, 1909, Petition Review.
Dec. 23, 1909, Petition submitted.
Jan'y, 1910, Order U. S. C. C. A. 2nd Circuit.
Feb'y 17, 1910, Order reference, back.
April 14, 1910, Testimony Completed.
Nov. 4, 1910, Report.
Feb'y 16, 1911, Opinion, Hon. L. Hand.
March 1, 1911, Motion for leave to add testimony.
Apr'l 20, 1911, Order decretal, so far as affects appellant.
Order denying motion.
June 30, 1911, Petition of Appeal, order allowing appeal. Assignment of errors. Citation.

1 *Assignment of Errors on Appeal.*

United States District Court, Southern District of New York.

In the Matter of ALBERT O. BROWN & O'rs., Bankrupts; In re HAN-OVER NATIONAL BANK FUND.

And now on the 29th day of June, 1911, comes The First National Bank of Princeton, Ill.; William H. Simpson, Frederick J.

Bullen, Samuel C. Scotten, and Scotten & Snyder, claim severally, by Thorndike Saunders, attorney for them and each of them, and each for himself alleges that the order herein entered on the 20th day of April, 1911, in respect to these claimants is erroneous and against the rights of these petitioners in matters pending, to wit:

1st. In dismissing their several petitions.

2nd. In deciding that claimants' funds were not traced into or connected with the properties and money deposited by said Hanover National Bank to the Receiver herein on the 5th September, 1908.

3rd. In omitting to decide that claimants' funds or some thereof had been traced into or connected with the securities deposited by bankrupts with the Hanover National Bank, New York, on the 24th and 25th August, 1908, and which either in specie or surplus came into hands of Receiver in the bankruptcy.

4th. In omitting to decide that all the deposits and credits in the account of the bankrupts with the Hanover National Bank of the City of New York on the 24th and 25th August, 1908, were in pursuance of an agreement between them, wherein said bank agreed to close the account and off-set the debits against bankrupts for checks paid by said bank against the debt of said bank to the bankrupts on the opening balance and other credits in the said account, at its closing. That until said closing of the account the bank was debtor to said bankrupts, and using its own funds, and committed to hold claimants' funds unapplied.

5th. In omitting to decide that said bank did balance the account, offsetting debit against credit items, at the close of the day of August, and again upon bankrupts' failure, as of the 25th August, 1908, at noon, said bank did close such account and balance in offset the debit against credit items therein, including therein claimants' funds as part of such credit items.

6th. In omitting to determine that said Hanover National Bank, in the afternoon of August 24th, 1908, off-set said sums of money so owed by it, as stated and set forth on the credit side of Exhibit 21 herein, against the debit side of said account herein, to wit: against the sums paid by said bank on drafts and checks drawn by bankrupts.

7th. In omitting to decide that the debt of bankrupts to the bank for drafts or checks paid by it appearing on the debit side of said Exhibit 21, included sums of money paid out for securities which were deposited with said bank on 24th and 25th August, 1908.

8th. In omitting to decide that claimants' funds were included and formed part of the credited items aforesaid of Exhibit 21.

9th. In omitting to decide that the items debited and credited on said Exhibit 21 formed part of one continued account under the agreement implied between bank and depositor, and not a series of separate or independent transactions.

10th. In omitting to decide that the money paid by Hanover National Bank to the Receiver herein was a survival of some part

estate of the bankrupts into the purchase of which claimants' funds had entered.

11th. In omitting to decide that certain of the debit items in Exhibit 21 herein were directly connected with the purchase of specific securities that were deposited by bankrupts with the Hanover National Bank, and by that bank sold and accounted for to the Receiver in this bankruptcy.

12th. In omitting to determine that claimants' funds were a charge upon the mass of securities and moneys delivered by Hanover National Bank of New York to the Receiver in Bankruptcy herein on or about September 5th, 1908.

13th. In omitting to determining that claimants' funds or some part thereof had entered into or been connected with the moneys deposited by bankrupts in the Hanover National Bank of New York on the 24th of August, 1908, into which claimants' funds were mingled, and for which that bank owed a sum equal to the said deposit of the 24th August, 1908.

14th. In omitting to decide that the application of claimants' funds in offset against the debts of the bankrupt to the Hanover National Bank on the afternoon of the 24th August, 1908, was an investment thereof by the bank and not by claimants, or by their consent, in a debt of bankrupts to said bank for moneys advanced and paid by it.

15th. In omitting to decide that Exhibit 21 gave such bank a lien on said stocks deposited with said bank by the bankrupts, and upon the surplus proceeds of some of the stocks specifically pledged for loans.

16th. In omitting to decide that the said Exhibit 21 was not enforced by said bank, but that in lieu thereof said bank offset the credit side of its account with bankrupts, inclusive of claimants' funds against the debit side of said account, and thus enlarged and increased the interest and estate of the bankrupts that went to the trustee by the amount of claimants' funds.

17th. And by order entered herein on or about May 26th, 1911, refusing to permit claimants to give further testimony as to the specific part of Hanover National Bank fund into which claimants' funds are traced.

June 29th, 1911.

THORNDIKE SAUNDERS,

Attorney for Claimants, 27 William Street, Borough of Manhattan, City of New York.

Citation.

United States District Court, Southern District of New York

In the Matter of ALBERT O. BROWN & ORS., Bankrupts; In
OVER NATIONAL BANK FUND.

The President of the United States of America to Charles E. Field, Trustee in Bankruptcy herein:

You are hereby cited to appear in the United States
6 Court of Appeals for the Second Circuit, to be held at
and County of New York, in the United States Court
therein, within thirty days from the date of this writ, pursuant
appeal filed in the Clerk's office of the United States District
for the Southern District of New York, to show cause, if any
be, why the errors mentioned in said appeal should not be corrected,
and speedy justice should not be given to the parties in that behalf
demanded.

Witness, Hon. Leonard Hand, Judge of the United States
Court, Southern District of New York, the 29th day of June, 1911.

LEARNED HAND.

Petition of Appeal.

United States District Court, Southern District of New York

In the Matter of ALBERT O. BROWN & ORS., Bankrupts; In
OVER NATIONAL BANK FUND.

The intervening petitioners in reclamation herein
7 The First National Bank of Princeton, Ill., William
Simpson, Frederick J. Bullen, Samuel C. Scotten and
and Snyderacker, severally conceiving themselves aggrieved
orders herein entered on the 20th April, 1911, and the 26th
May, 1911, in the office of the Clerk of the District Court
United States for the Southern District of New York, and
errors set forth in their assignment of errors herewith filed, do
pray the Court for an order granting leave to appeal.

And that a transcript of the records and proceedings on
on which said orders were made and entered, or such parts
as are pertinent to the said errors, be duly made, authenticated
sent to the Circuit Court of Appeals for the Second Circuit.

Dated, New York, June 29, 1911.

THORNDIKE SAUNDERS,
Solicitor for Petitioners, Appellant
27 William Street, New York

Now, to wit: June 29th, 1911, it is ordered that the aforesaid
allowed as above prayed.

LEARNED HAND

8

Order Reference to Trace Proceeds.

At a Stated Term of the District Court of the United States for the Southern District of New York, held in and for the Borough of Manhattan, City of New York, February 17th, 1910.

Present: Hon. George C. Holt, District Judge.

In Bankruptcy. No. 11277.

In the Matter of ALBERT O. BROWN, G. LEE STOUT, EDWARD F. Buchanan, Lewis G. Young, Samuel C. Brown, and W. Rhea Whitman and the Firm of A. O. Brown & Co., Bankrupts; ex Parte the First National Bank, Princeton, Ill.; Samuel C. Scotten, Scotten & Snyder, Frederick J. Ballen, William H. Simpson, Edgar Perkins, Petitioners in Reclamation Severally.

The several petitioners aforesaid having filed petitions and been referred to Special Master, and having obtained and filed his reports in their favor; and the U. S. District Court having denied their motion to confirm said reports and dismissed their several petitions, etc.; and a petition of review having been filed, argued and determined on behalf of above named petitioner The First National Bank of Princeton, Ill.; and the U. S. Circuit Court of Appeals having modified the decision and order of the U. S. District Court, providing that said order shall be without prejudice to further proceedings by the claimant within thirty days from date hereof; and a stipulation having been heretofore made to the effect that the other petitioners in reclamation above named shall abide by the result of aforesaid review: now

Ordered that above named petitioners in reclamation have leave to file amended petitions or to proceed upon the original petitions heretofore filed herein within thirty days from entry hereof. That all such petitions are hereby referred to Special Master John J. Townsend for hearing, determination and report.

And said Special Master shall take such testimony relevant to such petitions as may be offered, and make his report to this court, and either party may file exceptions thereto and bring on same for hearing on five days' notice and at any motion day.

This order modifies, as to said petitioners, all former orders in reclamation in this bankruptcy.

GEO. C. HOLT, D. J.

We consent to entry of above order.

HAYS, HERSHFIELD & WOLF,

Attorneys for Trustee.

THORNDIKE SAUNDERS,

Attorney for Claimant.

February 17th, 1910.

10 *Petition of First National Bank of Princeton, Illinois*

Before Hon. John J. Townsend, Special Master.

NEW YORK, FRIDAY, *March 18, 1910*, at 2

Present:

Messrs. Hays, Hershfield & Wolf, by Mr. Wolf, for the Trustee;
Thorndike Saunders, for the Claimant.

Mr. SAUNDERS: I move to amend the petition of the First National Bank of Princeton, Illinois, by inserting the words "including proceeds of said 20 Atchison common and said 25 Missouri Pacific" in the last paragraph, so that the paragraph will read:

"That said estate, or some part of it, to wit, the money deposited in Bank to the credit of said bankrupts, including proceeds of said 20 Atchison common and said 25 Missouri Pacific, and other properties have come into the possession of the Receiver here."

Mr. WOLF: I do not think that amendment of the petition is sufficient to enable me to proceed.

SPECIAL MASTER: I shall allow the amendment, under the decision of the Circuit Court of Appeals, for what it may be.

Mr. SAUNDERS: I offer in evidence the printed Record of the United States Circuit Court of Appeals, for the Southern District of New York, in this matter, certified by the Clerk of the Court, August 11, 1909)—with the exception of the clause set out at folio 11 of the printed Record, beginning with the words "is conceded," and ending with the word "hands."

Mr. SAUNDERS: I offer in evidence a report by Sufferin & Son are the accountants for the Trustee. The report is as follows:

Ex. 34.

"Account of First National Bank, Princeton, Ill.

On Aug. 25, 1908, the date of the failure of A. O. Brown, this account showed a debit balance of \$1,914.01 against the following long stocks:

- 25 Amalgamated Copper.
- 20 Atchison.
- 60 Mo. Pacific.

After the ledger liquidation made by the Receiver, this account showed a credit balance of \$5,194.70.

On Aug. 12, 1908, there was purchased for this account 10 shares of Atchison at 89¼ for \$1,787.50 against which purchase the following certificates:

- 12 X-171502 for 10 shares.
- X-171342 " 10 "

Certificate No. X-171502 was delivered on Aug. 13, 1908, to Carlisle, Mellich & Co., against "Stocks Borrowed" account, and in consequence of this delivery, A. O. Brown & Co., were in receipt of Carlisle, Mellich & Company's check for \$857.50, which check was deposited on the same day, viz., Aug. 13, 1908, in the Hanover National Bank. Certificate X-171342 was delivered on Aug. 13, 1908, to Decoppet & Doremus, against "Stocks Borrowed" account, in consequence of which delivery, A. O. Brown & Co., were in receipt of Decoppet & Doremus' check for \$900.00, which check was deposited on the same day, viz., Aug. 13, 1908, in the Hanover National Bank.

On Aug. 17, 1908, there was purchased for this account from Decoppet & Doremus, 25 shares of Mo. Pacific at 56 for \$1,403.13. On account of there having been additional purchases of this stock for other accounts made from Decoppet & Doremus, by A. O. Brown & Co., they were to receive "on balance" from Decoppet & Doremus, 60 shares and the certificate numbers so received on Aug. 17, 1908, were as follows:

A-36951—20 shares.

A-15326—20 "

B-21012—10 "

B-20940—10 "

Certificate No. A-36951 was delivered on Aug. 17th to Decoppet & Doremus, against "Stocks Borrowed" account, in consequence of which delivery A. O. Brown & Co., were in receipt of Decoppet & Doremus' check for \$1,120, which check was deposited on the same day, viz., Aug. 17, 1908, in the National Bank of Commerce. The balance of the certificates were delivered on Aug. 21, 1908, to Decoppet & Doremus against a sale made for No. 24 account. On this date, viz., Aug. 24, 1908, A. O. Brown & Co., were in receipt of Decoppet & Doremus' check "on balance" for \$49,290.56, which check was deposited in the Hanover National Bank.

The account of the First National Bank of Princeton, has credit for the deposit of the following checks, all of which checks were deposited by A. O. Brown & Co., on the date of their receipt in the Commercial National Bank of Chicago.

Aug. 13, 1908—\$1,787.50

" 14, " — 808.25

" 18, " — 1,403.13

Marked Exhibit 9, March 18, 1910.

MR. SAUNDERS: I offer in evidence entries of morning and afternoon balances of each day, Account G. B. in the Hanover National Bank, August 7 to 25, 1908, inclusive:

MR. SAUNDERS calls the attention to the sheet marked "Account G. B." and asks to have the entries incorporated in the record. They are as follows:

SPECIAL MASTER: Request is granted.

14 Account No. G. B.

Sheet No. —.

Name Hanover National Bank.

Address.....

Aug. 7	\$32240.15	Aug. 10	\$32240.15
10	39363.70	11	39363.70
11	80789.85	12	80789.85
12	41810.84	13	41810.84
13	29096.67	14	29096.67
14	62222.73	17	62222.73
17	132440.50	18	132440.50
18	32033.07	19	32033.07
19	101433.14	20	101433.14
20	211441.93	21	211441.93
21	149984.40	24	149984.40
24	6459.91	25	6459.91
25	181374.39	24	181374.39
"	373.04	"	373.04
"	276.64	"	554.69.39

(Written in pencil in this item the figures \$55192.75).
Marked Exhibit 10, March 18, 1910.

Mr. Wolf states that he is willing to stipulate that on August 25th, 1908, A. O. Brown & Co. made what purported to be a general assignment for the benefit of creditors, but that the Assignee never qualified by giving any bond; that the Receiver in Bankruptcy was appointed on August 28th; and that he took possession on the 1st day of September, 1908.

15 Mr. SAUNDERS: I offer in evidence, from the account of the Receiver, filed February 19, 1909, in the office of the Clerk of the District Court of this District, the statement that the Receiver received from the Hanover National Bank \$2,055.97 and also \$53,597.66.

Entire report received in evidence, and marked Exhibit 11, March 18, 1910.

Mr. SAUNDERS: I offer from loose leaf book from page printed at top "To Deliver," the following entry: August 24, 1908, on line numbered 188, Newborg & Co., 8400 shares Reading at price of 124, total amount \$520800; under column headed "Numbers," there are pencil figures "4300."

Marked Exhibit 13, March 18, 1910.

NEW YORK, *March 24th*, 1910, at 11:30 a. m.

Present:

Mr. Wolf, for the Trustee.

Mr. Saunders, for the Claimant.

Mr. SAUNDERS: The Trustee has produced the books of the bankrupt so far as he has been requested to do. I ask that they be marked for identification.

Mr. WOLF: I object to their being marked for identification.

The MASTER: I will allow them to be marked for identification.

Mr. SAUNDERS: I offer the Hanover Bank deposit book beginning March 18th, 1909.

Mr. WOLF: I do not want it to be considered as an admission on my part that that is such a book.

16 The MASTER: I will allow the book to be marked for identification.

Same received and marked Princeton Bank Exhibit number "1" for identification, March 24th, 1910.

Mr. SAUNDERS: I offer another book of deposit in the National Bank of Commerce, New York City, the first entry being October 28th, 1907.

Mr. WOLF: I object to it, and disclaim any knowledge of the book except that it was produced from the bankrupt's books.

The MASTER: Let it be marked for identification.

Same received and marked for identification Princeton Bank Exhibit number "2" of March 24th, 1910.

Mr. SAUNDERS: I offer a book of check stubs, the first stub being 26,001, on the National Bank of Commerce, New York City, and down to stub number 27,168, inclusive.

Same received and marked for identification Exhibit number "3" of March 24th, 1910, Princeton Bank.

Mr. SAUNDERS: I offer for identification the check book of the Hanover National Bank, the first entry being August 24th, 1908, the stub being 38,001.

Same received and marked for identification Exhibit number "4" Princeton Bank, March 24th, 1910.

Mr. SAUNDERS: I offer for identification a stub check book on the Hanover National Bank commencing July 14th, 1908, with stub number 35,001 and containing entries of August 24th, 1908.

17 Same received and marked for identification Princeton Bank Exhibit number "5" March 24th, 1910.

Mr. SAUNDERS: I offer for marking for identification a book, the first page of which is marked EX. C. H. loose leaf book, headed "To receive" and also "Monday," June 1st, 1908.

Same received and marked for identification Princeton Bank Exhibit "6" of March 24th, 1910.

Mr. SAUNDERS: I also offer another loose leaf book marked "To deliver, Monday, June 1st, 1908."

Same received and marked for identification Princeton Bank Exhibit "7" of March 24th, 1910.

Mr. SAUNDERS: I offer for identification loose leaf book marked on the back "Bank number '3' A. O. Brown & Company."

Same received and marked Princeton Bank Exhibit "8" for identification of March 24th, 1910.

Mr. SAUNDERS: I offer a loose leaf book marked on back "Number 3, A. O. Brown & Company."

Same received and marked for identification Princeton Bank Exhibit number "9," March 24th, 1910.

Mr. SAUNDERS: I also offer for identification a loose leaf book marked on the back "Loan Sheets."

Same received and marked for identification Princeton Bank Exhibit "10" of March 24th, 1910.

18 Mr. SAUNDERS: I also offer a loose leaf book for identification marked "Transfer number 3, A. O. Brown & Company."

Same received and marked for identification Princeton Bank Exhibit number "11" of March 24th, 1910.

Mr. SAUNDERS: I offer the exhibits that were connected with the claim of Schuyler, Chadwick & Burnham, being checking account of A. O. Brown & Company with the Hanover National Bank.

Same received and considered as marked in evidence Exhibit number "12" of Princeton Bank, March 24th, 1910.

Mr. SAUNDERS: I offer in evidence from the Morison Exhibits the following Exhibits number "5-A," 5-B, 5-C, 5-D, 5-E, the 5-E being the stocks returned to the Receiver.

Same received and considered as marked in evidence Princeton Bank Exhibit number "13" of March 24th, 1910.

Mr. SAUNDERS: I offer from the book marked Exhibit number "1" for identification of to-day the following entries. Page 161, First National Bank, 10,000 of August 13th, 1908. Page 162, First National Bank, D. R., 15,000, August 14th, 1908. Page 174 of August 19th, 1908, First National Bank, B. K., 5,000. Page 177, First National Bank, cashier, 10,000, August 20th, 1908. Page 184, August 25th, 1908, First National Bank, 5,000.

Mr. SAUNDERS: I offer these for what they are worth.

Mr. WOLF: No objection.

Same are considered and marked Princeton Bank Exhibit number "14" of March 24th, 1910.

19 Mr. SAUNDERS: I offer in evidence from Exhibit number "4" for identification stub number 38,094, reading "A. H. Combs & Co., 80,000." The heading on the stub's page is dated August 25th, 1908. I also offer stub number 38,069, reading "A. H. Combs & Co., 120,000, August 24th, 1908. I also offer stub number 38,071, dated August 24th, 1908, reading "A. H. Combs & Co., 146,600."

Mr. WOLF: No objection.

Same received and considered as marked Princeton Bank Exhibit number "15" of March 24th, 1910.

Mr. SAUNDERS: I offer from Exhibit marked "4" for identification to-day page 183, Newborg & Company, 266,600, carried out 266,600, under date of August 24th, 1908, printed on the page number 182.

Considered as marked in evidence Princeton Bank Exhibit number "16" of March 24th, 1910.

Mr. SAUNDERS: I offer in evidence from Exhibit number "1" for identification page 185, dated August 25th, 1908, "A. H. Combs & Co., 66,600, extended out 66,600."

Considered as marked in evidence Princeton Bank Exhibit number "17" of March 24th, 1910.

Mr. SAUNDERS: I offer in evidence from Exhibit number "1"

for identification, page 185, the line "Deposits \$466,250.19, extended \$466,250.19," and the line below "Drawn \$511,774.39, and extended out \$511,774.39." This shows a debit balance of \$51,524.20, extended out \$51,524.20.

Considered as marked in evidence Princeton Bank Exhibit number "18" of March 24th, 1910.

Mr. SAUNDERS: I offer in evidence from Exhibit number "6" for identification all the entries of August 24th, 1908.

Mr. WOLF: I object to that as incompetent, irrelevant and immaterial and not connected with this proceeding. I am willing to stipulate that on Monday, August 24th, 1908, A. O. Brown & Company purchased a great number of shares of stock.

Mr. SAUNDERS: Upon that stipulation I withdraw the above offer. I now offer from book marked Exhibit number "6" for identification an entry under date of August 24th, 1908, reading as follows: "Of whom bought A. H. Combs & Company; number of shares, 4,300, description, Reading; price \$124; amount blank; commission blank; total amount \$266,600; the numbers of the certificate as stated." This page is marked at the top in pencil number 5, dated August 24th, 1908.

Same is considered as marked in evidence Princeton Bank Exhibit 18-A of March 24th, 1910.

Mr. SAUNDERS: I also offer a letter from Messrs. Newborg to myself, dated March 22nd, 1910.

The paper was received and marked Princeton Bank Exhibit number "19" of March 24th, 1910.

Mr. SAUNDERS: I wish to call the attention of the Special Master to Exhibit number "14" of March 18th, 1910, in this case
21 being an entry of August 24th, 1908, appearing in Exhibit number "7" marked for identification to-day reading "188 Newborg, number of shares 8,400; description, Reading; price, \$124; amount, blank; commission, blank; tax, blank; 520,800; and in pencil under the word number, 4,300."

Mr. SAUNDERS: I offer the testimony of Edward F. Buchanan at the first meeting of creditors in December, 1908, from page 159 to page 171.

Mr. WOLF: I object to it as incompetent, irrelevant and immaterial.

The MASTER: Objection overruled.

Mr. WOLF: Exception.

Same received and considered as marked Princeton Bank Exhibit "20" of March 24th, 1910.

Mr. SAUNDERS: I offer in evidence the testimony of Harry B. Combs, given after pages 159 to 171, hearing of first meeting of creditors.

Mr. WOLF: I offer the same objection to that.

The MASTER: I make the same ruling.

Mr. SAUNDERS: I offer the loan agreement dated January 8th, 1907, between A. O. Brown & Company and the Hanover National Bank in the City of New York, and I offer the statement of accounts between A. O. Brown & Company and the Hanover National Bank

in New York dated August 21st, 1908, showing debits and credits between August 21st, 1908, and September 5th, 1908, inclusive.

The paper was received and marked Princeton Bank, Exhibit Number "22" of March 31st, 1910.

22 (See the Exhibit in the matter of Schuyler, Chadwick & Burnham.)

Mr. SAUNDERS: I offer five loan slips numbers 1519, 1530 and 1546 and 1553, and one without a number, dated August 25th, 1908.

Same were received and marked Princeton Bank, Exhibit Number "23-A, 23-B, 23-C, 23-D, and 23-E."

(See the Exhibits in the Schuyler, Chadwick & Burnham claim.)

Mr. SAUNDERS: I wish to call the attention of the Special Master to Folio number 183 of Princeton Bank Exhibit for identification number "1" of March 24th, 1910, "Newborg," and also to "Miller," 2 items of \$266,600 each in connection with credit items appearing on Exhibit number "22" of March 31st, 1910.

I also wish to call the Master's attention to book marked for identification Princeton Bank Exhibit number "7" of March 24th, 1910, headed "To deliver," the item 125, to deliver Miller & Company, 2800 A. R. at 93, 260,400 August 24th, 1908, and to the entry under date of August 24th, 1908, "To deliver" to Newborg & Company 4300 shares Reading at 124, 520,800, and also to a letter of Newborg & Company dated March 22nd, 1910, being Princeton Bank Exhibit "19" of March 24th, 1910, to the effect that 4300 shares only were received August 24th, 1908, against the payment of \$266,600.

I also wish to call the attention of the Master to the items being a credit item of \$17,300 on Exhibit number "22" of March 31st, 1910, the item being dated August 25th, 1908, also to folio number 185 of Exhibit number "1" for identification of March 24th, 1910, under date of August 25th, 1908. Also to the item of August 25th, 1908, from Exhibit number "7" for identification of March 24th, 1910, to deliver to Tripp & Company for one hundred shares of Canadian Pacific \$17,300.

I also call the attention of the Master to Folio number 173 of Princeton Bank Exhibit for identification number "1" of March 24th, 1910, in connection with Princeton Bank Exhibit "22" of March 31st, 1910.

I also call the attention of the Master to credit item of \$80,000 and credit of \$85,000 on Princeton Bank Exhibit number "22" of March 31st, 1910, in connection with the entries on folio 179 of Exhibit for identification number "1" of March 24th, 1910.

I also call the attention of the Master to a credit entry of \$50,000 on Exhibit number "22" of March 31st, 1910, in connection with the entry of \$50,000 on folio number 183 of Exhibit number "1" for identification of March 24th, 1910.

I also call attention of the Master to a credit item of \$8,000 on August 25th, 1908, on Exhibit number "22" of March 31st, 1910, in connection with a corresponding entry on folio number 184 of exhibit for identification number "1" of March 24th, 1910.

I also call attention of the Master to a credit item of \$235,010.83,

24 on Exhibit number "22" of March 31st, 1910, in connection with a corresponding entry appearing on folio number 181 of Exhibit number "1" for identification of March 24th, 1910, and in connection with entry to "Deliver" August 24th, 1908, Newborg & Company A. C. P., 78,010.83.

I also call the attention of the Master to debit item \$85,800 on Exhibit number "22" of March 31st, 1910, in connection with the check book on the Hanover National Bank marked for identification Princeton Bank Exhibit number "5" of March 24th, 1910, the stub being numbered 37,952, to A. Lippe.

I also call the attention of the Master to Exhibit "6" for identification of March 24th, 1910.

I offer the testimony of Mr. Albert H. Combs, and Harry B. Combs, so far as it appears in the minutes of the first meeting of creditors under date of January 28th, 1909, on pages 177 to 179, and 194 to 197, and pages 203 to 207, inclusive.

The same was received and considered as marked Princeton Bank Exhibit number "24" of March 31st, 1910.

I also offer in evidence paragraphs 5 and 6 and 7 of the petition of Charles C. Littlefield dated October 20th, 1909, and in the settlement of the suit of Charles C. Littlefield as Trustee against A. H. Combs & Company, and also the stipulation annexed to the petition dated October 19th, 1909, both papers being attached to the order authorizing the compromise, and filed in the office of the Referee October 28th, 1908.

25 Received and considered as marked Princeton Bank Exhibit number "25" of March 31st, 1910.

Mr. SAUNDERS: I offer the testimony of Albert O. Brown found at page 12 of the first meeting of creditors, where the following questions and answers appear:

"When you got orders executed from my firm or any other firm did you buy the stock in accordance with the rules of the New York Stock Exchange?

A. We bought the stock according to the rules of the New York Exchange on every order we received.

"Q. What did you do with them after you bought them?

A. We carried them along in the regular way.

"Q. Why don't you have them now?

A. Any stocks we might have had would be sold out.

Q. Who sold them out?

A. The Receiver did. And for your information I would like to say that all our business was conducted according to the rules of the New York Stock Exchange.

"Q. You say the stocks were held until the Receiver got there?

A. If they were not ordered to be sold by the people we bought them for."

Same received and considered as marked in evidence Princeton Bank Exhibit number "26" of March 31, 1910.

Mr. SAUNDERS: I offer the Trustee's report filed April 29th, 1909.

Same received and marked Princeton Bank Exhibit number "27" of March 31st, 1910.

26 Mr. SAUNDERS: I offer in connection with the testimony of Messrs. Combs a statement which I received of the account of A. O. Brown & Company with the National Bank of Commerce in New York.

Same received and marked Princeton Bank Exhibit number "28" of March 31st, 1910.

Mr. SAUNDERS: I call the attention of the Master to debit item for \$10,000 and a debit item of \$2,506.55 on Exhibit number "28," the statement at the bottom of the page number 4 of the Trustee's petition in the compromise, and in the Trustee's suit against A. H. Combs & Company before mentioned filed with the order of compromise October 28th, 1909.

NEW YORK, *April 7th*, 1910—at 11 a. m.

Present:

Thorndyke Saunders, for the Claimant.

Messrs. Hays, Hershfield & Wolf, by Mr. S. P. Friedman.

Mr. SAUNDERS: I offer in evidence the report that I had prepared by the Trustee's accountant of all the checks that were drawn on the 24th and 25th of August, 1908, by A. O. Brown & Company on the Hanover National Bank of New York, and of certain entries in the National Bank of Commerce, showing the disposition of the balance to the credit of A. O. Brown & Company on the 24th of August, 1908, and excerpts from the deposit book of the Hanover National Bank, and the receipt of a check from Hayden,

27 Stone & Company on May 27th, 1908, for \$10,000, which check was deposited on the same day in the Hanover National Bank, this report of the accountant being dated April 6th, 1910, and signed Suffren & Son.

The paper was received and marked Claimant's Exhibit Number "29," of April 7th, 1910.

Mr. SAUNDERS: I offer in evidence the testimony of Mr. Carse, given in the case of Schuyler, Chadwick & Burnham, the entire testimony of Mr. Carse.

The paper was admitted and marked, or considered as marked Claimant's Exhibit "31" of April 7th, 1910.

NEW YORK, *April 14th*, 1910, at 11 a. m.

Present:

Mr. Saunders, as before, for the claimant.

Mr. Friedman, as before, for the Trustee.

Mr. SAUNDERS: I ask to have marked in evidence from Exhibit for identification number "8" of March 24th, 1910, marked "Bank number '3' being page marked C. B. or G. B., commencing June 19th, 1908, and ending August 6th, 1908." This offer is made in connection with the subsequent page already in evidence, beginning August 7th, 1908, and ending August 25th, 1908, and marked G. B. being Exhibit number "10," of March 18th, 1910, in this case.

28 The page was marked Princeton Exhibit number "32."

Mr. SAUNDERS: I offer from the same book the balances in the National Bank of Commerce of New York found at folios G. A., consisting of three pages, the first date being December 6th, 1907, and the date ending September 15th, 1908.

The pages were received, and marked respectively Princeton Exhibit number "33," Princeton Exhibit number "33-A," Princeton Exhibit number "33-B."

NEW YORK, *April 21st*, 1910—at 11 a. m.

Present:

Mr. Wolf, for the Trustee.

Mr. Saunders, for the Claimant.

Mr. WOLF: I rest, on behalf of the Trustee, and move to dismiss.

Mr. SAUNDERS: The claimant rests.

United States District Court, Southern District of New York.

In Bankruptcy. No. 11277.

In the Matter of ALBERT O. BROWN & O'rs, Bankrupts.

To the Hon. George C. Holt, U. S. District Judge:

The Petition of the First National Bank of Princeton, Illinois, respectfully shows:

29 That it is a corporation duly organized and doing business in the State of Illinois.

That on the 13th of August, 1908, your Petitioner delivered by United States Mail to above named bankrupts, then in business in New York City as A. O. Brown & Co., a draft for \$1,787.50, payable to order of said bankrupts, with written instructions to apply the proceeds of said draft to the purchase of Twenty (20) shares Atchison Common and to forward same to your Petitioner.

That said draft was endorsed and the said amount thereon specified was collected and received by said bankrupts; but said bankrupts did not forward said Atchison Common to your Petitioner and same, as your Petitioner is informed, cannot now be found in their estate.

That their estate, or some part of it, to-wit, the moneys on deposit in bank to credit of said bankrupts and other properties, have come into the possession of the Receiver herein.

That on the 18th day of August, 1908, your petitioner delivered by U. S. Mail to above named bankrupts, then carrying on business in New York under the name of A. O. Brown & Co., a draft payable to order of said A. O. Brown & Co., for One thousand four hundred and three 13/100 — (\$1,403.13) and also written directions to collect the amount of said draft and apply the proceeds to the purchase of twenty-five (25) shares Missouri Pacific and to forward same to your Petitioner; that above-named bankrupts endorsed and collected said draft and received the same into their estate; but said bankrupts did not forward to your Petitioner said 25 shares Missouri Pacific,

and same, as your Petitioner is informed and verily believes, does not now form any part of the estate of said bankrupts.

30 That said estate, or some part of it, to-wit, the moneys on deposit in bank to credit of said bankrupts, including proceeds of said 20 Atchison and 25 Missouri Pacific, and other properties, have come into possession of the Receiver herein.

That no other or previous application of similar nature of this has been made herein.

Wherefore, Your Petitioner prays for an order directing the Receiver herein to pay and deliver to your Petitioner the sums aforesaid, with interest from the respective dates aforesaid, or for such other relief as may be proper and appropriate.

THE FIRST NATIONAL BANK, PRINCETON, ILLINOIS.
THORNDIKE SAUNDERS, *Att'y.*

COUNTY OF NEW YORK, ss:

Thorndike Saunders, being duly sworn, says: I am the attorney of above-named petitioner, empowered to take proceedings for collection of aforesaid moneys and properties; that foregoing petition is true, according to my best knowledge, information and belief; that the source of my knowledge is letters and paid drafts received from A. J. Bracken, Assistant Cashier of First National Bank, and conversation with H. E. Decker, an accountant, who has examined the books of said bankrupts, now in possession of C. E. Littlefield as Receiver of the estate of said bankrupts; and that the whole of said petition is stated on information and belief, founded
31 as aforesaid. That the reason that this verification is made by deponent and not by any officer of Petitioner is that such officers are not within this County, to the knowledge of deponent.

THORNDIKE SAUNDERS.

Sworn to before me this 9th day of December, 1908.

[SEAL.]

M. G. MILLER.

Notary Public, N. Y. Co., No. 96.

To Albert O. Brown, G. Lee Stout, Edward F. Buchanan, Lewis G. Young, Samuel C. Brown, and Wm. Rhea Whitman, Bankrupts, and

To Charles E. Littlefield, Esq., Receiver of said Bankrupts.

Sirs: On the foregoing Petition the undersigned will move this Honorable Court at its session in the United States Post Office Building in the City and County of New York, on the 14th day of December, 1908, at 10:30 a. m., or as soon thereafter as counsel can be heard, for an order directing the Receiver herein to pay to the petitioner or *their* attorney, the sums of money mentioned in the said petition, or for such other order as may be appropriate.

THORNDIKE SAUNDERS.

Attorney for Petitioner.

27 William Street, New York City.

To Albert O. Brown & ors., Bankrupts; Chas. E. Littlefield, Esq., Receiver.

(Endorsed:) Petition of First National Bank.—Filed Dec. 14, 1908.

32 United States District Court, Southern District of New York.

In Bankruptcy. No. 11277.

In the Matter of ALBERT O. BROWN & Ors., Bankrupts.

Charles E. Littlefield, Receiver of the above named bankrupts, answering the petition of First National Bank of Princeton, Illinois, respectfully shows to this Court and alleges:

I. Respondent herein denies any knowledge or information sufficient to form a belief as to the allegation set forth in said petition.

Wherefore your respondent prays that the said petition may be dismissed.

HAYS, HERSCHFELD & WOLF,

Office and Post Office Address, No. 115 Broadway, Borough of Manhattan, New York City.

33 SOUTHERN DISTRICT OF NEW YORK, ss:

Charles E. Littlefield, being duly sworn, says that he is the respondent herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

CHARLES E. LITTLEFIELD,

Sworn to before me this 14th day of December, 1908.

[SEAL.]

ADELE F. SHAW,
Notary Public, Kings Co.

Certificate filed in New York Co.

(Endorsed:) Answer filed Dec'r 14, 1908.

In re A. O. BROWN & COMPANY.

Reclamation Proceeding of The First National Bank of Princeton, Illinois.

Before Hon. John J. Townsend, Special Master.

NEW YORK, *January 13th*, 1909—at 2 p. m.

Present:

Mr. Wolf, for the Trustee.

Thorndike Saunders, for the Petitioner.

MR. SAUNDERS: I offer in evidence a check to the order of A. O. Brown & Company, dated August 12th, 1909, for \$1,787.50, en-

34 dorsed pay to the order of Commercial National Bank, A. O. Brown & Company, and marked paid through the Chicago Clearing House.

Same admitted and marked Exhibit Number "1" of this date.

Mr. SAUNDERS: I offer a letter from A. O. Brown & Company to the First National Bank of Princeton, Illinois, dated August 13th, 1908, and reading as follows:

"CHICAGO, August 13th, 1908.

First National Bank of Princeton, Illinois.

GENTLEMEN: We are in receipt of draft to our order for \$1,787.50, to cover purchase of twenty shares of Atchison Common, at eighty-nine and a quarter, for your account. Shipment of certificates will be made to you as soon as received from transfer office.

Very truly,

A. O. BROWN & COMPANY."

Same received and marked Bank Exhibit "2" of this date.

Mr. SAUNDERS: I offer in evidence another draft for \$1,403.13, dated August 17th, marked paid to the order of Commercial National Bank, paid to the order of A. O. Brown & Company, and marked paid through Chicago Clearing House to the Commercial National Bank.

Same admitted and marked Exhibit Number "3" of this date.

35 Mr. SAUNDERS: I also offer in evidence a letter dated August 18th, 1908, of A. O. Brown & Company to the First National Bank of Princeton, as follows:

⁶CHICAGO, ——— 18th, 1908.

First National Bank of Princeton, Illinois.

GENTLEMEN: We are in receipt of your favor of the 17th, and draft to our order of \$1,403.13, to purchase twenty-five shares of Missouri Pacific at fifty-six, for your account. Shipment of certificate will be made as soon as received from the transfer office.

Very truly yours,

A. O. BROWN & COMPANY."

Mr. SAUNDERS: I also offer a letter of the Receiver of A. O. Brown & Company to H. C. Roberts of the Princeton Bank of Illinois, the letter being dated October 24th, 1908, and being as follows:

H. C. Roberts, Esq., First National Bank, Princeton, Ill.

DEAR SIR: Further replying to your letters of October 21st, the books of A. O. Brown & Co. show the following: That there was received from De Coppet & Dorenius on August 17th, 60 shares of

36 Missouri Pacific. This stock was bought for different accounts, including 25 shares for the First National Bank of Princeton, 20 shares, C&O, A-36951, instead of forty shares as per my last letter, were delivered to De Coppet & Doremus on the same day against a sale made to them on August 7th, 10 shares for C. F. Webster, Erie, Pa., and 10 shares Herbert Wright & Co., Cleveland, O. The remaining forty shares, 20 shares Cert. A-45326, 10

shares Cert. B-20940 and 10 shares Cert. B-21012 were delivered to De Coppet & Doremus on August 24th as part of a sale of 105 shares sold for F. H. Payne, Williamsport, Pa. At the time of the suspension the account of F. H. Payne was short 205 shares of Missouri Pacific.

20 shares of Atchison was bought for your account and delivery made by Carlisle, Mellick & Co., on August 13th, two certificates of 10 shares each. 10 shares Cert. X-171502 were returned to Carlisle, Mellick & Co. on the same day against a sale made to them on July 17th for the account of A. Loeb, Reading, Pa., and 10 shares Cert. X-171342 were delivered to De Coppet & Doremus on the same day against a sale made on August 10th for the account of R. McClellan Brady of Detroit, Mich.

Very truly yours,

C. E. LITTLEFIELD,
Receiver A. O. Brown & Co.,
Per C. E. L."

The above letter was marked Bank Exhibit Number "5" of this date.

37 MARK HUTCHINS, being called as a witness on behalf of the petitioner, and being first duly sworn by the Master, testified as follows:

Direct examination by Mr. SAUNDERS:

Q. What is your occupation?

A. I am a bookkeeper.

Q. You are employed by the Receiver and Trustee in this matter?

A. Yes, sir.

Q. And you have been in the employ of the Receiver?

A. Yes, sir.

Q. Were you before that in the employ of A. O. Brown & Company?

A. Yes, sir.

Q. Have you produced the account of A. O. Brown & Company with the First National Bank of Princeton, in the books of A. O. Brown & Company?

A. Yes, sir.

Q. Will you please point it out to me, on what page it is?

A. Here it is (indicating).

Q. What book do you call that?

A. That is ledger number nine.

Q. A loose leaf ledger?

A. Yes, sir.

Q. Serial number?

A. It has no name except E. X. 34: that is the wire call in Chicago for that office.

Q. That is the account of the First National Bank in Princeton, Illinois?

A. Yes, sir.

Q. And that was the private wire number?

38 A. E. X. was the call wire number; we had two; E. X. and B. X.

Mr. SAUNDERS: I offer the two entries of August 12th and August 13th, 1908, in evidence. The item of August 12th, 1908, is as follows: 20 Atch. eighty-nine and a quarter, \$1,787.50. August 17th, twenty-five Mop., fifty-six, \$1,403.13. On the credit side of the ledger the following items: August 13th cash, ninety-six, \$1,787.50; August 18th, cash, 101, \$1,403.13.

Q. Mr. Hutchins, have you the account with the Commercial National Bank of Chicago?

A. Yes, sir.

Q. Where was this book kept?

A. In New York City.

THOMAS B. BATES, being called as a witness on behalf of the petitioner, and being first duly sworn by the Master, testified as follows:

Direct examination by Mr. SAUNDERS:

Q. You are a former bookkeeper of A. O. Brown & Company and at present employed by the Trustee?

A. Yes, sir.

Q. Will you look at the bank ledger number 3, the account of the Commercial National Bank of Chicago, and the entries showing credit balances in the bank to the account of A. O. Brown & Company from August 15th, 1908, to September 1st, 1908, inclusive, and read those?

39 A. You want all the credits of the A. O. Brown & Company account?

Q. Yes?

A. Well, according to the books of A. O. Brown & Company \$30,812.02 in favor of A. O. Brown & Company,—the bank owed A. O. Brown & Company,—at the close of business on August 13th. At the end of August 14th, \$21,580.87 in favor of A. O. Brown & Company. On August 17th, \$13,845.76 in favor of A. O. Brown & Company. On August 18th, \$12,512.51 in favor of A. O. Brown & Company. August 19th, \$20,950.01 in favor of A. O. Brown & Company. On August 25th, \$13,841.54 in favor of A. O. Brown & Company.

Q. What was the credit balance September 1st, 1908, the day of the sale by the bank of the collateral they were holding, after crediting it?

A. The collateral was not all sold on the first of September. From the time, up to the failure, up to the 15th of September—

The MASTER: Change the date from September 1st to September 15th.

A. According to the entry on the books here—

Q. Look at ledger G. O. number 3?

A. Yes, sir. (Witness taking book.) The bankrupt is charged, the Brown Bank account, \$13,797.10.

Q. The deposit account?

A. Yes, sir, which amount was applied to the credit of A. O. Brown & Company's loan account.—A. O. Brown & Company was borrowing \$140,000 odd dollars. They also charged Brown's bank account \$6.30 for exchanges during the month of August, and also interest on Brown's loan \$553.

40 Q. Then they credited the collateral account with the same amounts?

A. I do not know. Wherever they credited that was interest up to date on the loan, which they took out of the bank account.

Q. What was this \$432.73,—would the other side of the account tell you what that is?

A. This bank credited Brown's deposit account \$947.59,—that is excess on liquidation of securities in the loss account. After crediting \$13,397 there was a surplus in the loan account of \$947.09, which they credited to the loan account.

Q. In the loan account they first took out \$13,000 and these other sums, and relieved the collateral just to that extent?

A. Yes, sir.

Q. Did they sell the entire collateral?

A. Only a certain amount.

Q. After they sold a certain amount they had \$957 to the good, which they put into his deposit account, and handed him over the unsold securities?

A. No, we haven't got any unsold securities.

By Mr. WOLF:

Q. Give us the balance, Mr. Bates?

A. The bank owes A. O. Brown & Company \$432.73, before closing the place September 15th, 1908, and after closing out the collateral.

By Mr. SAUNDERS:

Q. Still further, look at that account, and state the moneys that were sent to New York from August 13th to August 25th, 1908, being five items?

A. The moneys transferred by telegraph?

Q. Yes.

41 A. On the 13th, \$10,000; on the 14th, \$15,000; on the 19th, \$5,000; on the 20th, \$10,000; on the 25th, \$5,000.

Q. Now, looking at the account of A. O. Brown & Company with the First National Bank of Princeton, Illinois, Ex. number 34, where Mr. Hutchins says they owe us after liquidation \$5,194.70, on page 9—that is an error?

A. They owe us?

Q. Yes—just answer this general question—did the First National Bank of Princeton, Illinois, owe anything to A. O. Brown & Company?

A. No; A. O. Brown & Company owed the First National Bank

of Princeton, a credit to the First National Bank of Princeton, Illinois, of \$5,194.70, after liquidation of securities.

Q. That is the estimated value of the securities?

A. That means if the securities were liquidated at market prices an hour or so after the failure of A. O. Brown & Company, there would be that much equity in the account in favor of the National Bank of Princeton.

Q. That means the First National Bank of Princeton is entitled to the stock they claim, and that they didn't owe anything to A. O. Brown & Company?

A. I am only testifying to what the books show. I do not know what they are entitled to, nor what they are going to get. Figuring up the account of the First National Bank of Princeton, Illinois, it is as follows: As of August 25th, 1908, the bank owed A. O. Brown & Company \$1,914.01, for which A. O. Brown & Company were carrying, and were obligated to deliver the following long stocks—
42 sixty Missouri Pacific stocks, twenty-five Amalgamated Copper, and twenty Atchison, which if liquidated at an average price on the 25th of August would have realized \$7,108.71, and if the account were then closed out on the 25th there would have been a credit balance in favor of the First National Bank of Princeton, Illinois, of \$5,194.70.

Mr. WOLF: I should like to offer the proof of debt filed in this matter by the First National Bank of Princeton, Illinois, in the sum of \$1,293.27, filed in the office of the Referee, December 26th, 1908.

Same received and marked Trustee's Exhibit "A."

Mr. SAUNDERS: I object to it being received as irrelevant, and not applicable to any case here, and it is not a waiver, therefore, of any claim we have made.

The MASTER: I shall receive it and give you an exception.

Hearing closed.

In Re A. O. BROWN & COMPANY.

Petition of First National Bank of Princeton, Illinois.

Before Hon. John J. Townsend, Special Master.

Adjourned Hearing.

NEW YORK, *March 24th*, 1909—at 12.30 noon.

Present:

Messrs. Hays, Hirschfield & Wolf, for the Trustee, by Mr. Kaufman.

Thorndike Saunders, for the Claimant.

43 Mr. SAUNDERS: I make a motion to strike out from the evidence the Trustee's Exhibit "1," or "A," being a proof of claim of the First National Bank.

The MASTER: I will reserve decision.

Hearing closed.

PRINCETON BANK EXHIBIT 19.

Newborg & Co. Letterhead.

Mch 22, 1910.

Mr. Thorndyke Saunders.

DEAR SIR: In reply to your favor of the 21st inst., we beg to state that we received Aug. 24, 1908, from Mess. A. O. Brown & Co.,— 4,300 shares of Reading against payment of \$266,600. Numbers of certificates are as follows:

	J 85160	U 11025	J 82078	J 83249
	85161	J 84985	83677	
	80355	85520	82300	
	86008	85519	83201	
	86009	82921	83202	
	86010	82920	83196	
	85144	80977	83197	
	85145	80976	85518	
	80242	56977	74795	
	85760	72749	81082	
44	80578	83881	83248	
	81582	83882	85737	
	85550	83883	85738	
	79001	85067	80509	

Yours very truly,
(Signed)

BANK PRINCETON EXHIBIT "18A".

"To Receive" Aug. 24.

A. W. Combs (p. 5)	4300 Rdg.	\$266,600
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Numbers.

J 85160 1	U 11025	J 72749	81082
80355	J 84915	83881/3	83248
86008 10	85520	85067	
85144 5	85519	82078	
80242	82921/20	83677	
85760	80977	82300	
80578	56976/7	83201/2	
81582	85737/8	83196/7	
85550	80509	85511	
79001	83248	74795"	

Testimony E. F. Buchanan.

PRINCETON BANK EXHIBIT 20.

A. O. Brown & Company, #11277.

Extract from Minutes taken at Adjourned First Meeting of Creditors, January 26, 1911 (pp. 162-166; 207).

Direct examination of EDWARD F. BUCHANAN.

By MR. HAYS (page 162):

Q. In other words, the firm of A. H. Combs & Company drew a check out of their own fund, or against their own fund, for the sum of \$66,600 and deposited that to the credit of the account of A. O. Brown & Company?

A. I think that is the way it happened.

Q. Well, you know that they made a deposit to the credit of A. O. Brown & Company out of their own fund?

A. Yes, sir.

Q. In order to make the check for \$146,600 good?

A. That is my understanding of it.

Q. Well, you were there?

A. I didn't see the deposits made, I know—I will say that Mr. Combs told me that that had happened, yes, sir.

Q. And then after A. H. Combs & Company had deposited \$66,600 to the credit of A. O. Brown & Company, they presented a check for \$146,600 which was then paid by the Hanover National Bank?

A. Yes, sir.

46 Q. Now, how long were you there at the bank with Harry Combs?

A. Why, I don't know, about, well I was going to say I don't know how long Mr. Combs stayed there; I was longer than he was.

Q. How long were you and he there at the bank talking about making good this check for \$146,000?

A. I should say between twenty minutes and an hour.

Q. When it was ascertained that the amount to the credit of A. O. Brown & Company was only \$80,000 was anything said about furnishing the bank with additional security by A. O. Brown & Company in order to make the check for \$146,600 good?

A. Yes, sir.

Q. What was said about that?

A. We had some of our loans transferred to the bank, and Mr. Whitman brought the securities box up to see what we could do with the securities we had on hand.

Q. When you say you had some of your loans transferred to the Hanover National Bank, you mean that you got the Hanover National Bank to advance the money and take up some of the loans?

A. Yes, sir.

Q. Was that the loan of Ehrich Hochstadter & Company?

A. Yes, sir.

Q. The loan of \$250,000?

A. Yes, sir.

Q. That loan was made against securities which Ehrich Hochstadter & Company held?

A. Yes, sir.

47 Q. And the Hanover National Bank took up that loan by paying Ehrich Hochstadter & Company, and taking the securities?

A. Yes, sir.

Q. And after they had done that they still refused to certify the check for \$146,600?

A. Yes, sir.

Q. Then you said you sent for Mr. Whitman?

A. Yes, sir.

Q. What did Mr. Whitman do?

A. He brought up the securities box.

Q. He brought over the box containing A. O. Brown & Company's securities?

A. Yes, sir.

Q. And those were then exhibited to whom in the bank?

A. Mr. Carse, and one of his assistants; I don't remember what his name was.

Q. Did they go over these securities, and look them over?

A. Yes, sir.

Q. And they still refused to certify the check for \$146,600?

A. Yes, sir.

Q. Did you offer in behalf of A. O. Brown & Company to deposit these securities with them if they would certify this check for \$146,600?

A. I told them I would deposit such securities as we could use, as collateral.

Q. You would deposit securities which did not belong to customers?

A. Yes, sir.

Q. And all that belonged to A. O. Brown & Company you offered to deposit?

A. All that we had the right to hypothecate.

48 Q. All that you had the right to hypothecate you offered to deposit with the Hanover National Bank?

A. Yes, sir.

Q. And they declined to receive them, and certify the check?

A. We had a long discussion about it.

Q. And the result of that discussion was they refused to certify the check upon receipt of these securities?

A. Yes, sir.

Q. Did you lease any of these securities with the Hanover National Bank, or were they all returned, taken back to the office of A. O. Brown & Company?

A. Some were left. * * *

Q. Who would know about that?

A. Mr. Whitman.

Q. All that were not left with the bank were put back into the securities box and taken back to the office?

A. Yes, sir,—Mr. Whitman was the guardian of that box.

Q. And so he took that back?

A. Yes, sir.

Q. Were you there with Mr. Whitman until he left?

A. Yes, sir.

Q. What time did you leave the bank, you and Mr. Whitman, about? This was on the morning of the 25th of August.

A. I should say we left there a few minutes after 12 o'clock.

Q. Did you go back to the office with Mr. Whitman?

A. Yes, sir.

49 Q. And you arrived at the office when, you and Mr. Whitman, approximately?

A. A quarter past twelve, I should say.

Re A. O. BROWN & COMPANY.

Adjourned First Meeting of Creditors.

JANUARY 28, 1909—3.30 p. m.

Extract from Direct Examination of Harry B. Combs.

By Mr. HAYS:

Q. This check we have mentioned, for \$66,600 to the order of A. O. Brown & Company was endorsed and deposited to the credit of A. O. Brown & Company?

A. Yes, sir.

Q. And then your check for \$146,600 was certified?

A. Yes, sir.

Q. And then you deposited it in the Bank of Commerce?

A. Yes, sir; deposited it with the Bank of Commerce.

Q. At what hour of the day did you get there with this check?

A. Probably twenty minutes of twelve, because I had a lunch engagement at 12 o'clock.

Q. With whom did you have it, your father?

A. F. F. Glower. * * *

50

Testimony Noel.

Mr. O'Connor, Mgr., told me the firm in difficulty. Might have to make an assignment during the day. About noon he called me up and said the firm would have to assign. I had the assignment ready. O.C. told me abt. 8 A. M. At noon all the partners and the assignees were got together and the assignment was executed about 1 o'clock.

Testimony Buchanan.

O'C. was Mgr. of the office. I and O'C. had talked this over the evening before at my house. The other members of the firm talked it over the previous day on the 24th. On the 25th I was at the bank. I went and talked with Ely and Thomas, officers of the exchange, Pres. and Sec'y. They wanted a written suspension. I went back to the office. Mr. Combs came in after I got there. Brown had signed the suspension. Rhodes took charge.

Princeton Bank Case, Exhibit 12.

"V. That the facts, briefly stated, respecting said controversy, are as follows:

"On the 24th day of August, 1908, A. H. Combs & Co., at the request of the bankrupts, and acting as their brokers, purchased for the bankrupts 4,300 shares of the common stock of the Reading Company, for the sum of \$266,600. * * *

"That thereafter, the bankrupts delivered to A. H. Combs 51 and Co., on the same day, the sum of \$120,000, to be applied, and the same was applied, upon the said purchase price of said Reading stock, as aforesaid. So that the indebtedness due from the bankrupts thereon was \$146,600.

"That on the 25th day of August, 1908, the bankrupts paid to said A. H. Combs & Co., the further sum of \$87,493.45, to be similarly applied on said loan on account of said purchase, and which said sum was so applied by said A. H. Combs & Co. Of said \$87,493.45, \$80,000 was procured from the funds of the bankrupts in the Hanover National Bank, and the residue from the funds of the bankrupts in the National Bank of Commerce. The said \$80,000 was procured by said A. H. Combs & Co. in the following manner: The bankrupts, on the 24th day of August, 1908, gave to said A. H. Combs & Co. a check for \$146,600, for the balance of the purchase price of said Reading stock. Certification thereof was refused on the 24th day of August, 1908, by the Hanover National Bank, because of insufficient funds; and likewise was refused on the 25th day of August, for the same reason. That thereupon, said A. H. Combs & Co. deposited in the Hanover National Bank, of their own moneys, the sum of \$66,600, and the said check of \$146,600 was thereupon certified on the 25th day of August, 1908. That thereafter, and on the 25th day of August, 1908, the bankrupts delivered to said A. H. Combs & Co. certain stocks, bonds, notes and securities, on account of the remainder of said indebtedness." * * *

52

EXHIBIT 1 ID.

*Copy of Page 179 of Exhibit 1 Id. in Princeton Bank and 6 in Evid.
in Re Morison Claim.*

P. 179:

Note	200,000
F. H. Payne	20,640
Hanover	80,000
"	85,000
	121.94
	35.39
	980.
	881.75
	1,008.89

A. O. B. chs.

Redeposited.

38024	10,125
23	2,062.50
22	2,075
21	2,050
20	8,400
19	4,250
18	18,525
De Coppet & Co.	3,425
J. Wallace	1,662.50
Markoe & M.	6,050
Humphrey Co.	6,000
H. Content	20,198.44
Sternberger	8,400.00
A. H. Combs	31,400
Carlisle M. Co.	42,416.89

180:

A. H. Combs & Co.	153,362.50
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And at end of 185:

Hanover N. Bank	250,000
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53

PRINCETON BANK EXHIBIT 32.

Sheet No. —.

Account No. — G. B.

Name—Hanover National Bank.

Address. —, New York.

1908.

June	19.....	\$155,584.36	June	22.....	\$155,584.36
	22.....	65,846.27		23.....	65,846.27
	23.....	50,106.68		24.....	50,106.68
	24.....	47,811.31		25.....	47,811.31
	25.....	53,984.63		26.....	53,984.63
	26.....	82,429.45		29.....	82,429.45
	29.....	60,062.19		30.....	60,062.19
	30.....	41,295.24	July	1.....	41,295.24
July	19.....	38,570.59		2.....	38,570.39
	2.....	39,013.76		3.....	39,013.76
	3.....	50,053.28		6.....	50,053.28
	6.....	98,065.33		7.....	98,065.33
	7.....	51,699.73		8.....	51,699.73
	8.....	38,957.64		9.....	38,957.64
	9.....	118,148.11		10.....	118,148.11
	10.....	80,569.97		13.....	80,569.95
	13.....	36,607.38		14.....	36,607.38
	14.....	107,507.06		15.....	107,507.06
	15.....	121,967.92		16.....	121,967.92
	16.....	96,286.70		17.....	96,286.70
	17.....	89,354.05		20.....	89,354.05
	20.....	131,414.38		21.....	131,414.38
	21.....	111,609.77		22.....	111,609.77
	22.....	41,863.64		23.....	41,863.64
	23.....	36,938.62		24.....	36,938.62
	24.....	56,238.13		27.....	56,238.13
	27.....	40,968.52		28.....	40,968.52
54	28.....	43,912.40		29.....	43,912.40
	29.....	37,030.31		30.....	37,030.31
	30.....	38,360.69		31.....	38,360.69
	31.....	28,059.02	Aug.	3.....	28,059.02
Aug.	3.....	54,942.52		4.....	54,942.52
	4.....	41,595.86		5.....	41,595.86
	5.....	33,584.86		6.....	33,584.86
	6.....	36,885.72		7.....	36,885.72

CLAIMANT'S EXHIBIT 21.

Agreement Bank and Bankrupts.

Know all men by these presents, That the undersigned, in consideration of financial accommodations given, or continued to the undersigned by The Hanover National Bank of the City of New York, hereby agree with the said bank that whenever the undersigned shall become or remain, directly or contingently, indebted or liable to the said bank for money lent, or for money paid for the use or account of the undersigned, or for any overdraft or upon any endorsement, draft, guarantee or any other claim, or in any other manner whatsoever, the said bank shall then and thereafter have the following rights, in addition to those created by the circumstances from which such indebtedness or liability may arise against the undersigned, or his, its, or their executors, administrators, assigns or successors, namely:

1. All securities and property then and thereafter deposited by the undersigned with said bank, as collateral security to any such indebtedness or liability of the undersigned to said Bank, shall also be held by said Bank as security for any other indebtedness or liability of the undersigned to said Bank, whether then existing or thereafter contracted; and said Bank shall also have a lien upon any balance of the deposit account of the undersigned with said Bank existing from time to time, and upon all property of the undersigned of every description theretofore or thereafter left with said Bank for safekeeping or otherwise, or coming into the possession or under the control of said Bank in any way as security for any indebtedness or liability of the undersigned to said Bank now existing or hereafter contracted.

2. Said Bank shall have at all times the right to require from the undersigned that there shall be lodged with said Bank as collateral security for all existing liabilities of the undersigned to said Bank, approved securities to an amount satisfactory to said Bank, and upon the failure of the undersigned to keep with said Bank at all times, a margin of securities for such liabilities of the undersigned, satisfactory to said Bank, or at any time to comply immediately with the demand of the Bank for additional approved security, as collateral, or upon any failure to pay on demand any indebtedness or liability due on demand to said Bank, or upon failure to meet any business obligation, or upon any assignment for the benefit of creditors, or act of bankruptcy, whether voluntary or involuntary, by the undersigned, then and in either event all liabilities of the undersigned to the said Bank shall, at the option of the said Bank become immediately due and payable, notwithstanding any credit or time allowed to the undersigned by any instrument evidencing any of the said liabilities.

56 It is hereby expressly agreed that a request in writing be delivered at 30 Broad Street, New York, or deposited in the Post Office or in any drop-letter box within the City of New York

regularly maintained by the United States Government, enclosed in a post-paid wrapper directed to the undersigned at said address, or delivered to any telegraph Company at its office in the vicinity of said Bank in the Borough of Manhattan, New York City, for transmission by telegraph to the undersigned at said address, shall be a sufficient demand for additional security or for payment of any indebtedness or liability due on demand to said Bank.

3. Upon failure of the undersigned either to pay any indebtedness to said Bank when becoming or made due, or to keep up the margin of collateral securities, as above provided, then and in either event said Bank may immediately, without advertisement, and without notice to the undersigned, sell any of the securities or property held by it as against any or all of the indebtedness or liabilities of the undersigned, at private sale or Broker's Board or otherwise, or may, without notice, discount, collect, compound, compromise, settle, manage and turn the same into cash according to opportunity, at the discretion of any of the officers of said bank and apply the proceeds thereof as far as needed toward the payment of any or all such indebtedness or liabilities together with interest and all expenses (legal or otherwise) of sale or collection, holding the undersigned responsible for any deficiency remaining unpaid after such application. If any such sale be at Broker's Board or at public auction, said Bank may itself be a purchaser at such a sale free from any right
57 or equity of redemption of the undersigned, such right and equity being hereby expressly waived and released. Upon default as aforesaid said Bank may also apply toward the payment of said indebtedness or liabilities all balances of any deposit account of the undersigned with said Bank then existing.

It is further agreed that these presents constitute a continuing agreement, applying to any and all future, as well as to existing transactions between the undersigned and said Bank.

Dated New York, the 8th day of January, 1907.

(Signed)

A. O. BROWN & CO.

Ex. 2, Feb'y 24, 1910. G. C. P.
Bank Princeton Ex. 21. 3/31/10.

S.

Aug. 24	8,945			10,125
	8,498	50		2,650
	3,225			21,000
	1,500	21	21,668 50	79,000
	120	25	825,191 44 (in pencilling)	187 50
	50		(Ink)	30
	1	21	(130,807.46 in pencilling)	2,925
	10			28 13
	698	13		300
	50			87 50
	14			893 75
	150			x 101,200
	60		(In pencil)	85,003 54
	45		P. 48	3,860,416 84
	800		Aug. 25	146,600
	1,007	64		765
	200		Ck on Mech. Bk Pay't	(3,868,213 19)
	2,440	12	stopped in	(6,180 17)
	650		applied in	(in pencilling)
	237,314	17	reduction of	
	600		loan	
	600			3,562 24
	1,112	50	Aug. 26	4 27
	1,668	75	Aug. Exch.	
	51,000		Ck Nat'l B. Com.	
	2,175		New London Ret.	
	4,600		Pay't stopped	1,500
	7,750		Protest Fee	2
	10,125		Sept. 5	
			Check to Receiver	1,506 27
			for balance	2,055 97

2,125
 10,500
 21,250
 21,500
 15,225
 8,800
 8,850
 15,775
 15,800
 3,400
 36,800
 5,187 50
 15,800
 308,100
 55,300
 15,000
 2,200
 212,800
 157,875
 163,200
 2,050
 128,300

25,848,334 11

59	1908	Cr.		
By Balance	21	956,058	60	(In pencil)
Loan	x x	200,000		(Ink)
Dep.		20,640		
"		67,652	47	
"		102,415	33	
"		153,362	50	
		17,606	99	
		44,247	61	
		7,524	63	
		135,053	12	
		13,163	64	
x		235,010	83	
		199,000		
x P 33 (in pencil)		266,600		
x		266,600		
		156,000	00	
		11,536	25	
		199,436	23	
		127,525		
		395,800		
		353,800		
		115,423	18	
		80,895		
		136,000		
		161,460	63	
Loan x		85,000		x
" x		80,000		
" x		50,000		
Deposit		12,482	23	
" deposit on 24		49,290	56	
				pencilled line
25th Loan x		8,000		
Deposit		23,000		
" x		4,000		
"		4,500		
60				
"		4,860		
"		2,000		
"		(In pencil 2,874,393	36)	
"		5,000		
"		5,000		
"		3,332	53	
"		66,600		
" x		17,300		
"		62	07	
"		165		
"		1,367	47	
(Pencilled June 9)		\$145,187	07	
	11,367	24		

26th—Bal. applied in reduction
of loan 8/25 credited back 3,562 24

25,848,334 11

Bank Princeton Exh. 22 3/31/10 S.
S. C. & B. Ex 1—Feb'y 24/1910—G. C. P.

61

PRINCETON BANK EXHIBIT 23.

Deposit Slips.	Reverse Side.
No. 1530 50,000	
A. O. Brown & Co.,	Princeton Bank Ex. 23 D.
8/25	68,002 50 pd. 8/27/08 ck.
% 6	F. W. G., Jr. & Co. on #2
50	100 @ 136 1/2
18,002	
Aug. 24, 1908.	100 @ 136 1/4
500 Gt. N. Pfd.	300 @ 136
Clms Ex. 3/2/2 4/10 S.	
	New York. — —, 190.
	Received collaterals on the men-
	tioned Loan.
8/27 due 18.40	
A/c Check to Recr., Sept. 5,	
1908.	
Interest paid to	
Ex. 5-A.	
No. 1519	Princeton Bank Ex. 23-E.
A. O. Brown & Co.	
8/25	
% 6	96,646.50 pd. 8/27/08
16,646.50	500 Gt. No. of 68,102.50
Aug. 24, 1908.	200 N. Y. Cent. 20,821.
	100 Copper 7,723.
8/27 due 29.44	
A/c check to Recr., Sept. 5,	
1908.	
S. C. & B.	
Ex. 3 Feb'y 24/10 G. & P.	
Interest paid to	
Ex. 5-B	
No. 1546	Princeton Bank Ex. 23-C
A. O. Brown & Co.,	276,948.66 pd. 8/27/08
6%	
62	
26,948.66	1,000 Steel 45,042.50
	3,000 Copper 232,040.
	<hr/> 277,082.50

1,000 Steel	Less Int. on loans	133.84
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3,000 Copper	to date
	1546
Clmts. Ex. 5 2/2 4/10 S.	1519
	1530
S. C. & B.	1553

A/c check to Recr., Sept. 5,
1908.
Ex. 5-C.

No. 1553

A. O. Brown & Co.

Princeton Bank Ex. 23-B

6%
\$8,000. Aug. 25, 1908.

100 So. P.

Received Collaterals on the with-
in mentioned loan. Receipt of
Southern Pacific Co. for 100 shs.
infr. Chas. E. Littlefield, Recr.
A. O. Brown Co.

8/27 Int. 2.67

Sept. 5, 1908

Clmts. Ex. 6

2/2 4/10 S.

Ex. 5-D.

A. O. Brown & Co.

25,000-30,000 loan

Princeton Bank Ex. 23-A

Aug. 25, 1908.

200 Rep Steel	50 Penna
15 Ice Sees	5 No. Pac
10 Hide & L	5 Atch
5 Chicle	5 Steel

63

200 Am Brake Show

5 Brooklyn Un. Gas

1 Cent. Lthr. rf

5 Rock Isl

5 Wabash

5 W. & L. E. 1" rf

20 Int. M Mar rf

30 United Copper

10 No. Sec. Stubs Clmts Ex.

New York, Sept. 5, 1908. Re-
ceived collaterals on the within
mentioned loan. (Signed) E. C.
Littlefield, Receiver.

7

295 Neo Atah 2/2 4/10 S. A. O. Brown Co.

1440 Nipissing

13 Newhouse

550 Greene Cananea

490 Cumb Ely

200 Chgo Subway

100 Cons. Ariz Sm & Ref.

200 Brit Coe Copper

Ex. 5-E.

Suffern & Son, Certified Public Accountants, 165 Broadway, New York.

APRIL 6, 1910.

Thorndike Saunders, Esq., 27 William Street, New York City.

DEAR SIR: Agreeable to your request we beg to submit the additional following information taken from the books of A. O. Brown & Company.

Checks drawn on Hanover National Bank, August 24 and 25, 1908.

Excerpts from Check Book of National Bank of Commerce.

Excerpts from Deposit Book of Hanover National Bank.

Also we beg to advise you that A. O. Brown & Company were in receipt of a check from Hayden, Stone & Company on May 27, 1908, for \$10,000.00, which check was deposited on the same day in the Hanover National Bank.

Respectfully yours,

SUFFERN & SON,
Certified Public Accountants.

A. O. Brown & Company.

Checks Drawn on Hanover National Bank.

August 24, 1908.

(Continued.)

Number.	Amount.	Order of	Stocks received.		Remarks.
			No. of shares.	Description.	
37,992	\$27,314.17	Manhattan Company			Clearing House Balance
3	15,575.00	A. H. Combs & Co.	700	S. F. II	Pfd.
4	8,830.00	" "	400	S. F. II	"
5	8,800.00	" "	400	S. F. II	"
6	15,225.00	" "	700	S. F. II	"
7	21,500.00	" "	1,000	S. F. II	"
8	21,250.00	" "	1,000	S. F. II	"
9	10,500.00	" "	500	S. F. II	"
38,000	1,638.75	Godwin & J.	300	La Rose	Mining
1	1,112.50	Tripp & Co.	200	La Rose	"
2	3,400.00	Dominick & Dominick	100	Aco	Am. Cott. Oil
3	28.13	Miller & Co.	25	San Carlos	Mining
4	187.50	John Borg	100	Tri Boul.	"
5	600.00	Asiel & Co.	100	Can	Am. Can.
6	600.00	" "	100	Can	"
7	36.00	V. C. Brown	6	Can	"
8	2,200.00	Eff. Laurence	200	S. F. II	Pfd.
9	2,050.00	L. B. Chapin	200	S. F. II	"
10	300.00	V. C. Brown	50	Can	Am. Can

A. O. Brown and Company.

Checks Drawn on Hanover National Bank.

August 24, 1908.

(Continued.)

Number.	Amount.	Order of	Stocks received.		Remarks.
			No. of shares.	Description.	
11	200.00	Gwynne Bros.	500	No. Bu. Ext	North Butte Ext.
12	87.50	S. G. Currie	50	B. S. G.	Bay State Gas
13	350.00	Gwynne Bros.	200	B. S. G.	"
14	893.75	V. C. Brown	25	D. R.	"
15	2,175.00	Gwynne Bros.	100	Subway	Chic. Subway
16	2,125.00	A. H. Combs & Co.	100	S. F. H	Pfd.
66					
38,017	\$10,125.00	A. H. Combs & Co.	500	S. F. H	Deposited Han. Nat.
18	18,525.00	" "			Deposited Han. Nat.
19	4,250.00	" "			Deposited Han. Nat.
20	8,400.00	" "			Deposited Han. Nat.
21	2,050.00	A. H. Combs & Co.			Deposited Han. Nat.
22	2,075.00	" "			Deposited Han. Nat.
23	2,062.50	" "			Deposited Han. Nat.
24	10,125.00	" "			Deposited Han. Nat.
25	2,925.00	Randolph	100	Ric. Pfd.	Rock Isl. Pfd.
26	5,187.50	Newberg & Co.	100	B. R. T.	Annal. Cop.
27	7,750.00	Searsom, H.	100	A. C. P.	On Account

28	1,000.00	Chas. Daniel			Annul. Cop.
29	15,800.00	Carter W. T.			"
30	31,600.00	Harris & F.			"
31	308,100.00	A. Lipper & Co.	200	A. C. P.	
32	15,800.00	Markoe & M.	400	A. C. P.	
33	55,300.00	E. Laurence	3,900	A. C. P.	
34	79,000.00	Ehrich H. & Co.	200	A. C. P.	
35	4,600.00	Boody, McL. & Co.	700	A. C. P.	
36	600.00	C. Minzesheimer	1,000	A. C. P.	Chic. Cit. Western
37	101,200.00	Dudley Bros.	200	Eric, Com.	
38	36,800.00	Stone & Gray	100	Cit. W. Com.	
39	51,000.00	A. Lipper & Co.	2,200	Steel	Blotter does not show stock as received.
40			800	Steel	
41			550	N. Y. C.	
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A. O. Brown and Company.
Checks Drawn on Hanover National Bank.

August 24, 1908.

(Continued.)

Number.	Amount.	Order of	Stocks received.		Remarks.
			No. of shares.	Description.	
51	9,600.00	Schuyler C. & B.	300	P. B. Pfd.	Deposited Nat. Com.
52	5,800.00	Ehrlich H. & Co.			Deposited Han. Nat.
53	2,925.00	E. C. Randolph			\$42,300.00
54	259,700.00	A. H. Combs & Co.			3,100.00
			300	Paul	19,800.00
			100	M. K. T.	112,800.00
			200	Sou. P.	30,900.00
			1,200	A. R.	37,200.00
			300	N. Y. C.	13,600.00
			400	B. O.	\$13,600.00
			800	R. I.	Pd. twice-charged
			800	R. I.	Suspense
55	291,650.00	A. H. Combs & Co.			99,000.00
			1,000	Sou. P.	30,750.00
			500	Pa.	12,300.00
			200	Pa.	136,000.00
			1,000	Ch. Nor.	

38,056	"Marked Void"	A. H. Combs & Co.	600	Can. Pac.	Imp. 6s
57	\$103,200.00	" "	500	Gt. Nor. P.	Mark 4,000 Rdg. to Market
58	68,387.50	J. R. Heintz	1M	So. W. Coal	Cash 1.
59	1,092.50	Markoe & M.			Note \$200,000.00
60	4,000.00	V. C. Brown & Co.	20	Dist.	On Account
61	705.00	Hanover			Failed to deliver
62	85,003.54	Hanover			On Account
63	200,000.00	A. Lipper & Co.			Failed to deliver
64	62,000.00	Doremus			Overpaid in P. O.
65	15,480.00	Ehrich & Co.			P. O.
66	9,000.00	Carlisle M. & Co.			P. O.
67	29,885.00	Eff. Laurence			E. W. Brown
68	100.00	A. H. Combs & Co. }	4,300	Reading	A. H. Combs & Co.
69	120,000.00	A. H. Combs & Co. }			
38,070	Void	Colonial Bank			
71	146,600.00	A. H. Combs & Co.			
*72	400.00	A. H. Combs & Co.			
*94	80,000.00	Ehrich H. & Co. by			
*Paid	250,000.00	Hanover Bank	3,000	A. C. P.	

*Drawn August 25, 1908.

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A. O. Brown and Company.

Excerpts from Check Book of National Bank of Commerce.

August 25, 1908.

Number.	Amount.	Order of.	
27,165	\$10,000.00	A. H. Combs & Co.	On Account.
27,164	4,000.00	Hanover National Bank	Deposited in Hanover Nat'l Bank

A. O. Brown and Company.

Excerpts from Deposit Book of the Hanover National Bank.

Date.	Amount.	From	Remarks.
Aug. 24, 1908	\$235,010.83	{ Combs & Co. Newborg & Co.	1,000 Un. Pac. @ 157 ac- count C. H. 1,000 A. C. P. @ 78, int. \$10.83. Stocks borrowed
Aug. 25, 1908	5,000.00	Commercial Nat'l Bank Chicago	Transferred to Hanover Nat'l Bank account
Aug. 25, 1908	66,600.00	Combs & Co.	Deposited by Combs & Co.
Aug. 25, 1908	4,000.00	Nat'l Bank of Commerce	Transfer to Hanover Nat'l Bank account.

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PRINCETON BANK EXHIBIT 31.

In re A. O. BROWN & COMPANY.

#11277.

NEW YORK, *February 24, 1910—12 m.*

Adjourned Hearing on Claim of Schugler, Chadwick & Burnham.

Before John J. Townsend, Special Master.

Appearances:

Mr. Ralph Wolf, for the Trustee.

Mr. W. B. Crisp, for the Claimant.

HENRY R. CARSE, being duly sworn, testified as follows:

Examined by Mr. CRISP:

Mr. Carse, your testimony given in the Morison case has been stipulated into this case, in so far as it is relevant and material. I want to ask you a few questions, bearing upon that testimony.

Q. On the morning of August 24th, what collateral did you have of A. O. Brown & Company, at the opening of business on that day?

A. At the opening of business on Monday morning, August 24th, I do not believe that we had any collateral at all. No, none.

Q. In the early part of the morning of that day, as I understand your testimony, you made a loan of \$200,000 to A. O. Brown & Company?

71 A. That was a loan made on the plain note of the firm, without any collateral.

SPECIAL MASTER:

Q. And what was done with the \$200,000, was it placed in their deposit account?

A. Yes; credited in their account.

Mr. CRISP:

Q. Is that loan shown in the statement which you have in your hand?

A. Yes, sir.

Mr. CRISP: I offer that statement in evidence.

Statement received and marked Exhibit "1" of this date.

Q. Did you have a loan agreement with them, at that time?

A. Yes, sir.

Q. Look at the paper which I hand you (handing witness paper), and see if that is a copy of the agreement?

A. Yes, sir.

Mr. CRISP: I offer the copy of the agreement in evidence.

Received and marked Exhibit 2, of this date.

Q. I understand you to say that you received no col-ateral for the \$200,000 at all?

A. No, sir.

72 Q. Did you make any other loan of that date, August 24th?

A. Yes, sir; we made a loan during the morning of \$85,000 and one of \$80,000 both at the same time.

SPECIAL MASTER:

Q. Why do you speak of it as two loans: \$85,000 and \$80,000; and not \$165,000. Were they two different transactions?

A. Yes, sir; one of \$80,000 was made against 500 shares of Great Northern Preferred, 200 shares of New York Central, and 110 shares of Amalgamated Copper; while the other loan of \$85,000 was made against some Tobacco Bonds, I haven't the detail here. That was probably the reason they were made separately.

Mr. CRISP:

Q. Did you know what those Tobacco Bonds were?

A. They were some 6's and some 4's, I believe.

Q. Of what value, do you remember?

A. Of more than sufficient value to cover the loan. I haven't the date here.

Q. Can you give it to the Referee, at some time?

A. Yes, sir.

Q. Will you look at the paper which I now show you, which is a copy of Exhibit 5-B, in the Morison case, and state whether or not that represents the loan and the collateral which was received with it?

A. For the \$80,000 loan; yes, sir.

Mr. CRISP: I offer the copy of Exhibit 5-B in the Morison case in evidence.

Received and marked Exhibit 3, of this date.

73 HENRY R. CARSE (examination continued):

By Mr. CRISP:

Q. What collateral did you receive with the fifty thousand loan that you made?

A. Somebody from Brown's office called up during the day, and asked if they could make a substitution of these tobacco bonds, and I said all right, and they called up later and said that they would make a new loan for \$50,000, and I said all right, and they sent up a check. They paid off the \$85,000 loan and they got a new loan of \$50,000 on five hundred Great Northern preferred.

Q. Look at the paper which I now show you and see if that is the loan slip for the \$50,000 and collateral which went with it?

A. That is a copy of the loan slip.

Mr. CARSE: I offer it in evidence.

Same received and marked Trustee's Exhibit number "4" of Feb-

ruary 24th, 1910 (the paper was previously marked in the Morison case as 5-A).

Q. On August 25th you made a loan of \$250,000 to A. O. Brown & Company, didn't you?

A. Yes, sir.

Q. What collateral did you receive with it?

A. We received one thousand shares of United States Steel common and three thousand shares of Amalgamated Copper.

Q. Is the paper I now show you, which was Exhibit 5-C in the Morison case, a copy of both slips and collateral which was deposited with that loan?

A. Yes, sir.

74 Mr. CRISP: I offer the paper in evidence.

The REFEREE: What day was this loan made, or rather what time of the day?

The WITNESS: Early in the day, about twelve o'clock.

The paper was received and marked Trustee's Exhibit "5" of February 24th, 1910.

Q. Who made the actual transaction for the bank?

A. I did.

Q. Who was the actual member of the firm you dealt with?

A. Mr. Buchanan.

Q. Did he come to see you?

A. He did come to see us.

Q. Didn't you on the same day make another loan of \$8,000 to A. O. Brown & Company?

A. We did.

Q. What collateral did you receive for that?

A. One hundred shares of Southern Pacific common stock. It was placed in transfer.

Q. By whom?

A. By A. O. Brown & Company.

Q. Before it got to you?

A. Yes, sir; we got the transfer receipt.

Q. What time was that?

A. It was quite early.

Q. Was that before or after the \$250,000 loan?

A. It was about the same time; I cannot say absolutely; about 10 a. m.

Q. Look at the paper I now show you, being marked Exhibit 5-C in the Morison case, and I ask if that is a copy of the loan slip and the collateral referred to?

A. It is.

75 Mr. CRISP: I offer it in evidence.

Same received and marked Trustee's Exhibit "6" of February 24th, 1910.

Q. On August 24th, the arrangement was made for a loan of between \$25,000 and \$30,000, as I understand your testimony, do you recall that, on Monday?

A. It was on the 25th.

Q. Such collateral was deposited by you?

A. Yes, sir; for that purpose.

Q. Does the slip I now hand you show the collateral deposited with you on that date?

A. Yes, sir.

Q. About what time of the day on Monday, the 25th, did you make arrangements for the loan of \$25,000?

A. I think from my testimony that I have not been very clear as to the time. I am somewhat uncertain as to the exact hour.

Q. It was before you heard of the assignment?

A. Yes, sir; a considerable time before that.

Q. What was done with the loan of \$250,000 which you made early on the morning of the 25th of August, when was that paid off?

A. Paid off between two and three o'clock, by their giving us their check on ourselves.

Q. What date?

A. Monday, August 24th.

Q. You have explained the \$85,000 loan already. That was taken up by the substitution of the \$50,000 loan and collateral attached to it?

A. No, by being paid with a check.

Q. A check on your bank?

A. Yes, on ourselves.

76 Q. Then the \$50,000 loan was made as you have testified?

A. Yes, sir.

Q. What was done about the \$80,000 loan which was made on the 24th, what became of that?

A. That remained with us until the collateral was sold on August 25th, and the proceeds were used to pay the amount due on the loan and the interest and the balance was included in the check which was paid to the Receiver on September 5th, 1908. The same is true with reference to the \$50,000 loan, and also in regard to the \$60,000 loan, but the \$8,000 loan, some one had got that certificate in transfer, and they refused to deliver it to us.

Q. The transfer agent refused?

A. Yes, sir; so that we delivered the transfer receipts to the Receiver on September 5th.

Q. You paid off the \$8,000—where did you get the money to pay that off?

A. From the proceeds of the other collateral.

Q. Will you look at the statement marked Exhibit number "1" of this date, and I call your attention specifically to a deposit of \$23,000 thereon on the 25th day of August—can you tell whose check that was that was so deposited?

A. There is the original slip of A. O. Brown which is dated August 24th.

Q. What date was it actually deposited?

A. The amount in the ledger indicates it was deposited on the 25th.

Q. Whose check was it?

A. The only information I had was that it was a check drawn on the Mechanic's National Bank.

Q. Do you know by whom?

A. No, sir.

77 Q. Is that the only \$23,000 you received on that date, on the 24th or 25th of August?

A. From A. O. Brown & Company, yes, sir.

Q. I call your attention again to the statement, and to checks deposited, two deposits of \$266,600 each on the 25th of August. Will you kindly state whose they were?

A. One check was drawn on the National Bank of Commerce, and the other was drawn on the Phoenix National Bank.

Q. Are those the only deposits of those amounts on the 24th?

A. Yes, sir.

Q. Do you know whose check that was that was drawn on the Phoenix National Bank?

A. No, sir.

Cross-examination by Mr. WOLF:

Q. What was the bank balance credited A. O. Brown & Company on the morning of the 24th of August?

A. \$130,867.16.

Q. What were the deposits and withdrawals on that date, the gross deposits on the 24th, that is the additional deposits?

A. \$3,743,526.20.

Q. What were the drafts?

A. \$3,874,393.36.

Q. The drafts actually charged on the 24th?

A. \$3,868,213.19.

Q. That left a balance at the close of business to open up with on Tuesday morning how much?

A. \$6,180.17.

Mr. CRISP: I object to this line of examination as immaterial and irrelevant.

The MASTER: Objection overruled.

Mr. CRISP: Exception.

78 Q. What are the deposits on the 25th of August?

A. \$145,187.07.

Q. Making a total of how much?

A. \$151,367.24.

Q. What were the withdrawals on the 25th of August?

Mr. CRISP: I made the same objection to all this line of examination, as irrelevant and immaterial.

The MASTER: I overrule the objection.

Mr. CRISP: Exception.

A. We paid \$146,600 in one check, one of \$705, and we charged to the account the exchange on items due us of \$4.27; also an item on New London, which they had deposited with us, and which was returned to us unpaid, of \$1,500, and the protest fee of \$2.00, and

that left a balance of \$2,055.97, for which we gave a check to the Receiver on September 5th—there is also a check of \$500 on the Mechanic's Bank, payment on which was stopped by them.

Q. How early in the day was the check for \$146,600 paid, or certified?

A. My recollection of the time is somewhat uncertain.

By Mr. CRISP:

Q. The items of \$500, \$1,500, and \$2.00, were at what time in the day charged back?

A. The item of \$500 was charged back sometime on August 25th. It must have been by three o'clock, or else the other bank would not have had the right to return it to us.

79-114 Q. Probably not before twelve o'clock of that day?

A. No, it was probably after the failure. The item of \$1,500 came back to us the following day, August 26th.

Q. You charged that back August 26th?

A. Yes, sir.

Q. These are the only items outside of the \$140,600 referred to by you?

A. No, there was one check for \$705, that was paid early on the morning of August 25th, it was either certified or paid in cash by our paying teller.

Mr. WOLF: I want to place in evidence the Master's report in re Morison, and the order of the District Court thereon, and the order of the Circuit Court of Appeals, and I also would like to testify that the Trustee herein has complied with those orders.

Mr. CRISP: I object to this as irrelevant and immaterial.

The MASTER: Objection overruled.

Mr. CRISP: Exception.

Hearing closed.

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Motion.

United States District Court, Southern District of New York.

In the Matter of ALBERT O. BROWN & Ors., Bankrupts.

Before Hon. Learned Hand, U. S. District Judge.

Claimants, The First National Bank of Princeton, Ill., Wm. H. Simpson, Frederick J. Bullen, Samuel C. Scotten and Scotten & Snyder, on annexed affidavit verified March 1, 1911, by Thomas B. Bates, respectfully ask that the order *order* proposed by the trustee be refused, as to these claimants and that their petitions be referred back to the Referee, John J. Townsend, Esq., to take testimony and report upon the matters referred to in said affidavit, or such other relief as may be just be allowed.

THORNDIKE SAUNDERS,

Att'y for said Claimants.

116 *Affidavit of Thomas B. Bates Read in Support of Motion.*

United States District Court, Southern District of New York.

In Bankruptcy. No. 11277.

In the Matter of ALBERT O. BROWN & ORS., Bankrupts; In the Claims
Against the HANOVER NATIONAL BANK FUND.

COUNTY OF NEW YORK.

City of New York, ss:

Thomas B. Bates, being duly sworn, says that during August, 1908, and before, the deponent was chief accountant in the employment of above named bankrupts' firm, that on the 24th of August, 1908, in anticipation of a large amount of business, deponent was assigned to the aid of Cashier Rhoads in the cage, and knew of the general policy and course of the business done.

That deponent has been employed by Thorndike Saunders, attorney for the First National Bank of Princeton, Ill., and for other claimants, to ascertain the derivation of the stocks pledged with the Hanover National Bank on the 24th of August, 1908, to secure the loans numbered by that bank and for the amounts respectively following, to wit:

117 No. 1519, \$80,000 on 500 G. N. Pfd., 200 N. Y. C. and 100 Copper.

No. 1530, \$50,000 on 500 G. N. Pfd.

No. 1546, \$250,000 on 1,000 Steel and 3,000 Am. Copper.

No. 1553, \$8,000 on 100 S. P.

That deponent has been afforded access to the books of account of said bankrupt in possession of Sufferin & Sons, Trustee's accountants.

Deponent has procured from the books aforesaid and from A. H. Combs, the numbers of the certificates of the stocks purchased, and from the Hanover National Bank, some of the numbers of the certificates of stocks pledged to and sold by them on August 26, 1908.

500 G. N. Pfd., Nos. 52891, 57657, 57702, bought of Lippe, \$61,400; 56921, 53003, A. 61518.

200 N. Y. C., Nos. 140727, 140533, bought of Lippe, \$51,000; No. 38039.

100 Copper, No. 71472, bought of Payne Webber Co., \$7,850.

500 G. N. Pfd., Nos. promised by the Bank, bought of Payne Webber & Co.

1000 Steel, Nos. Same as above.

3000 Copper, Nos. 76938, 76943, 74709, 64821, 64822.

There are numbers of 500 shares, balance are promised by the bank. These came from Lippe & Co., \$308,100 number 38,031. Above check No. 38,039 for \$51,000 was the first check drawn on the bank account after the \$237,314.37 Clearing House and the balance at that time as shown by the bank cash deposit book.

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Dr.

	\$237,314.37	Bal.	\$143,755
\$364,395.00	127,080.63	Bal. Loan.	200,000
	51,000.	Payne ck. 20,640.	364,395.00
	308,100.	Cr. Bal.	127,080.63
		Loan.	80,000.00

The \$308,100 was the next large check drawn after the \$51,000.

During the whole of the 24th August the policy directed and adopted was to give out no checks that on being presented would exceed the balance on deposit in the bank, therefore checks were held back while the stocks received were immediately thereupon sold or loaned or pledged and the amounts received deposited. Some such items appear in foregoing statement.

With more time deponent could go more into detail and he can show the source and destination of most of the stock bought and of the deposits; so also can he show the claimants' stock and whether at the time of conversion thereof there were any certificates on hand or in pledge that would represent such stocks.

THOMAS R. BATES.

Sworn to before me this 1st day of March, 1911.

HARRY DAVID PARR,

Notary Public, New York County.

119 *Statement of Vice-President Henry R. Carse, of the Hanover National Bank of New York, Read in Support of Motion.*

In the United States District Court, Southern District of New York.
In Bankruptcy.

In the Matter of ALBERT O. BROWN & Ors., Bankrupts.

Upon the Claims of The First National Bank of Princeton, Illinois,
and Other Claimants Represented by Thorndike Saunders.

For the bank of which I am vice-president I had the management of the account, checking and loans of above named bankrupt's firm, A. O. Brown & Co., on the 24th and 25th August, 1908, and subsequently.

It was known about ten o'clock in the forenoon of the 24th that the firm had to pay the Stock Exchange Clearing House \$237,314.17. Their credit balance with us on that morning was \$130,867.60. Two loans were arranged for at the same time, about ten o'clock of that 24th—one for \$85,000 on Tobacco bonds and one for \$80,000 on 500 Great Northern preferred, 200 New York Central and 100 Amalgamated Copper; and then an arrangement was made for a credit loan of \$200,000, without security other than the general agreement covering any of the firm's money and other property that might come to us.

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The stock collateral for the loans \$80,000 and \$85,000 were delivered to us before the checks \$38,069 and \$38,031 were certified.

The first check certified was the Clearing House \$237,314.17.

We keep a certification book with lines ruled and numbered and the checks certified are noted on those lines, during business hours, in the order of presentation and the number of the line is written on the check.

On the statement of the checking account filed and marked in these proceedings as an exhibit, the checks certified and numbered 1 to 27 inclusive are set out in the order of their presentation for certification. Checks 29-70 inclusive are not in such order. They came in a bunch, about the close of business and were entered and certified after three o'clock on the 24th. I remained at the bank until seven o'clock on that evening.

The check No. 38,039 to Lipper & Co. was No. 6 in order of certification. The collateral had been already delivered to us. The check No. 38,031 was number 24 in order.

No certifications were allowed unless the balance to credit of the account was ample. I am not sure at this distance of time, but I think the credit balance at no time during that business day fell below Twenty thousand dollars. I, myself, kept tab on a pad on my desk on the account during the whole of that business day. I had constant reports, so that nothing was done without my knowledge and sanction.

Deposits kept coming in during the whole of the day, aggregating, with the loans credited but without the opening balance, \$3,743,526.20 and, as I said, the bulk of the certification was after three o'clock. Checks 1-27 inclusive aggregated \$876,107.92; checks 29-70 aggregated \$2,440,550.

On my statement of the account, said exhibit, the loans are placed at the foot of Aug. 24th. The reason of this is that the loans were in the loan clerk's department and his tickets passed through the note teller and reached the bookkeeper later than others.

I append a statement of certificate numbers of the stocks pledged to and afterwards sold by us, except as to the 500 Steel, which I cannot give for the reason that W. R. Hough & Co., the brokers who sold that, have gone out of business and the books and papers cannot be located. Also except 500 Great Northern Pfd. The broker who handled that is dead, and his books and papers are scattered or destroyed. The Tobacco bonds securing the \$85,000 loan were taken up during the day by payment of the loan and a new loan of \$50,000 on 500 Great Northern made. For the loan of \$8,000, on 100 Southern Pacific, we had a transfer certificate. This we surrendered to the receiver and we delivered to him the balance to credit of checking account and the surplus over the loans, except that we first subtracted from the surplus of the \$250,000 loan on 1000 Steel and 3000 Copper said to have been made by Ehrich, Hochstetler & Co. on the 24th August, and taken over by us on the 25th August, the interest on all the loans also the \$8,000 principal of the Southern Pacific loan.

The transactions of August 24th reduced the credit balance to

that account to \$6,180.17. A check No. 38,071 for \$146,600 drawn by A. O. Brown & Co. to order of A. H. Combs & Co. was on my desk that afternoon of the 24th for certification and was not certified for lack of funds, until made good by deposits on the 25th. All funds to credit of that account on the 24th August, more than consumed in the certification of that check \$146,600. And all properties that came into possession of the bank by reason of any such credits, to wit, surplus of securities pledged, have been delivered to the Receiver in Bankruptcy.

HENRY R. CARSE,

*Vice-President Hanover National Bank
in the City of New York.*

COUNTY OF NEW YORK, ss:

On this 7th March, 1911, before me personally came Henry R. Carse, to me known and known to be Vice-President of The Hanover National Bank in the City of New York, and acknowledged the execution of the foregoing instrument for the purposes therein mentioned.

WALTER G. NELSON,

Notary Public, N. Y. Co.

[SEAL.]

N. Y. Central.

No. 140727 100 shs.
140533 100 "

Copper.

	H 76943	100 shs.	H 77611	100 shs.
	H 76938	100 "	H 76151	100 "
	H 74709	100 "	H 77480	100 "
	H 64821	100 "	H 75046	100 "
123	H 64822	100 "	H 75475	100 "
	H 71472	100 "	H 70666	100 "
	" 76982	100 "	H 77385	100 "
	" 76629	100 "	H 77532	100 "
	" 76630	100 "	H 76711	100 "
	" 76122	100 "	H 77386	100 "
	" 76530	100 "	H 77387	100 "
	" 63005	100 "	H 76721	100 "
	" 76500	100 "	H 76061	100 "
	" 76795	100 "	H 64998	100 "
	" 74517	100 "	H 65172	100 "
	" 76548	100 "		

Steel.

G 144398	100 shs.	100 shs.
G 144399	100 "	100 "
G 144400	100 "	100 "
G 144401	100 "	100 "
G 213036	100 "	100 "

Gt. Nor. Pfd.

56921	100 shs.	100 shs.
57732	100 "	100 "
56757	100 "	100 "
53003	100 "	100 "
52891	100 "	100 "

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Order on Motion.

In the District Court of the United States for the Southern District of New York.

In the Matter of A. O. BROWN & COMPANY, Bankrupts, in the Matter of the Claims against the So-called Hanover National Bank Fund.

A motion having been made herein for a reargument and for an order remitting the proceedings to Hon. John J. Townsend, Referee, as Special Master, for further hearing and testimony and report, and said motion having duly come on to be heard, after reading and filing the said notice of motion and papers annexed thereto, and upon all other papers and proceedings had and taken herein, and after hearing counsel, it is

Ordered, that the said motion be, and the same hereby is denied.
New York, May 26, 1911.

L. HAND, D. J.

125 *Affidavit of Thorndike Saunders, Read in Support of Motion.*

United States District Court, Southern District of New York.

In the Matter of ALBERT O. BROWN & Ors., Bankrupts; Upon Claims against \$53,597.66 of Hanover Bank Fund by First National Bank of Princeton, Ill., for \$1,787.50 Proceeds of 20 Atch. Com. and for \$1,403.13 Proceeds of 25 Mo. Pac. 2. William H. Simpson for \$945.00 Proceeds of 10 Atch. Pfd. 3. Of Fred J. Bullen for \$1,892.50 Proceeds of 20 People's Gas. 4. Scotten & Snyderacker \$11,691.70 Proceeds 85 Ill. Central Certificates.

COUNTY OF NEW YORK, ss:

Thorndike Saunders being duly sworn says that he is attorney herein for above named claimants in respect to the matters respectively referred to. These matters being presented to Mr. Justice Hand were treated in his opinion filed herein as not proved.

126 "The claimants have throughout assumed that throughout the 24th (August, 1908) the fund remained large enough to cover their claims and it is upon that rock that in my judgment their theory is wrecked."

No order has been entered herein, but on or about the 3rd of March, 1911, and shortly after the filing of such opinion, on representation of an order proposed by the trustee, the deponent applied to the Judge for a reference to ascertain what fund was chargeable, etc., and submitted a written application and affidavits of Henry R. Carse, Vice-President of Hanover National Bank of New York and of Thomas B. Bates lately chief accountant to the bankrupt firm covering the points made and those suggested and stating ability to give further facts relevant thereto. No denial was made by trustee. No order has been entered on such application, but the papers have been returned to and filed with the Clerk of this Court on the 4th day of April, inst. Deponent, supposing that the judge meant to deny his application presented an order, but same has not been signed. Deponent feels that he has been unfortunate in his presentation of said application and he submits very respectfully, that the facts so far proved and those that can be proved as shown in the affidavits aforesaid are sufficient to entitle claimants to recover.

That claimant's funds were included in the opening balance of \$130,867.60 to credit of bankrupts in said Hanover Bank on the morning of August 21, 1908, and that they with other moneys, deposits and loans were invested during that day in purchasing stocks is found and is not disputed. Stock Blotters Exhibits 6 and 7 id. support the purchases of stock as detailed in part in said affidavit of Thomas B. Bates. But the identifying numbers of certificates were not spread on the minutes. Now from those purchases stocks were taken and pledged with the Bank for specific loans and those loans were mingled with and used with the general credit and with proceeds of other sales. There is no dispute as to these facts. The objection is—"The \$130,867.60 may have been all used up before the payment for any security that has produced the 'Surplus.'" Mr. Carse's affidavit covers that point and further Mr. Carse testifies that the securities were delivered for the \$80,000 loan around 10 o'clock that morning, i. e., before any payments could have been made—and his affidavit and that of Mr. Bates show details as to the other loans. Those four loans, says the referee, contributed the surplus, i. e., the \$80,000, \$50,000, \$250,000 and \$8,000. These loans are fully described in the Exhibits (Ex. 23, 31).

The claimant's funds mingled were repeatedly added to by fresh credits and without considering these it cannot be said fairly that any fund was exhausted. President Carse says that balance was not exhausted. Some of the mingled money went into the payment of the 6th check certified that morning and that check paid for some of the collateral that produced that surplus. It is impossible to draw lines as to the particular hour and minute of the making of many of the deposits but there are two circumstances shown in Mr. Carse's affidavit that tend to prove the sufficiency of the mingled account at all times. First the interests of the bank whose credit to bankrupts of \$200,000, made in the morning without specific security and paid after 71 other heavy payments had been made

and secondly that fact that of the certifications on that day, Nos. 1 to 27, were before 3 p. m. and aggregated \$876,107.92 while checks certification numbers 29 to 70 aggregating \$2,210,550.00 were certified after 3 p. m. and the credits from deposits, etc., aggregated on that day \$3,874,393.36.

The bank had as security for their payment of check the mingled funds including claimants' moneys and also the full value of the securities pledged for the specific loans which of course includes said "surplus." They had thus, liens under their specific loans agreed and also under a general agreement which covered any drafts they might pay (Exhibit 22). The claimants had, for their involuntary advances in paying drafts that bankrupts should have paid, a right to their money out of that surplus both by way of subrogation and also because their money went into the purchase of the securities that produced that surplus. The whole of the credit balance and the value of the securities, except that surplus, was applied by the bank to their claims on the drafts so that after the payment of the \$146,600 check to A. H. Combs & Co., on the 25th of August, no part of that credit or values outside the surplus remained.

Deponent further says that the points raised as to identification of purchases, with pledges and absence of certificates representing the above referred to Ill. Central Certificates *to time* of conversion can be fully covered in a two hour session and that he believes his practice in this regard is authorized by precedents established in this case.

THORNDIKE SAUNDERS.

Sworn to before me this 12th day of April, 1911.

ALEX GILCHRIST, JR.,
U. S. Com.

129 To Hays, Hershfield & Wolf, Esq., Attorneys for Trustee.

DEAR SIRS: On foregoing affidavit and the opinion, records and testimony referred to therein, I will move this Honorable Court for leave to reargue the motion to return for further testimony these claims and for an order reversing the Special Master and directing payments of the claims or for such other order as may be just. That this motion will be brought on before the Court in Bankruptcy in its rooms in the United States Post Office Building in the City of New York, 10:30 on the 17th day of April, 1911, or as soon thereafter as counsel can be heard.

THORNDIKE SAUNDERS,
Attorney for Claimants.

130 *Order of District Court so Far as Relates to Claims on Appeal.*

In the District Court of the United States for the Southern District
of New York.

In the Matter of A. O. BROWN & O'RS, Bankrupts; In the Matter of
the Claim against the So-called HANOVER NATIONAL BANK FUND.

Rec'd April 28th, 1911. Entered April 20, 1911.

A motion having been made herein for an order upon the report of John J. Townsend, Esq., Referee herein, to whom this proceeding was duly referred as Special Master for hearing, testimony and report, and said motion having regularly come on to be heard,

On reading and filing notice of motion herein, and proof of due service thereof, the report of said Special Master, and the testimony and exhibits herein, including the stipulation between the attorneys for the trustee and the attorney for Bessie H. Parker, dated March 17th, 1911, and upon all the papers referred to in the said report, and after hearing counsel for the trustee and claimants herein it is

131 Ordered, that the said report of the said Special Master be and the same hereby is, except as hereinafter specifically ordered, in all respects confirmed, and the said findings and recommendations of the said Special Master, except as hereinafter ordered, be and they hereby are adopted and approved and made the recommendations and findings of this Court; and it is further

Ordered, that the trustee herein first pay out of the said fund the Special Master's fees and the fees of the stenographer herein; and it is further

Ordered that the trustee herein pay to Schuyler, Chadwick & Burnham, or their attorney, W. Benton Crisp, Esq., \$9,600, being the proceeds of the sale of claimant's stock, with interest on that sum at the same rate, if any, received by the trustee thereon, docket fees and disbursements to be taxed; and it is further

Ordered, that the motion herein to confirm the said report of the Special Master in so far as it recommends the dismissal of the claims in reclamation of Bessie H. Parker (No. 1) be, and the same hereby is denied and the said report in that respect is hereby overruled, set aside, and held for naught; and it is further

Ordered, that the trustee herein assign, transfer and deliver to the said petitioner, Bessie H. Parker, or her attorneys, Stetson, Jennings & Russell, a certain certificate for 100 shares of the stock of the Southern Pacific Company standing in the name of Charles E. Littlefield, Receiver, and now in his possession as trustee, and held by him subject to the order of the Court in this proceeding, and

132 do all things necessary to transfer, assign and set over all the right, title and interest which the said trustee has or may have in and to the said certificate of stock to the said Bessie H. Parker, or

her said attorneys, together with the docket fee and her disbursements to be taxed; and it is further

Ordered, that the said trustee may, at his option, deliver and pay over to said Bessie H. Parker, or attorneys, Stetson, Jennings & Russell, the sum of \$9,912.50, together with interest on that sum at the same rate, if any, as received by the trustee thereon, in lieu of the delivery by him of the said certificate of stock of the Southern Pacific Company as hereinabove directed, and it is further

Ordered, that the trustee herein deliver to Edgar Perkins or his attorney, Thorndike Saunders, Esq., 25 shares of the Nevada Utah stock, or their proceeds, without prejudice to the claimant's rights to prove as a general creditor for the credit balance in his favor; and it is further

Ordered, that the claims in reclamation of First National Bank of Princeton, Illinois, William H. Simpson, Fred J. Bullen; Samuel C. Scotten; Scotten & Snyder; Martha Leland; Ernest T. Fellows; Henrietta C. Shroeder-Burley; Thomas E. Conklin and Bessie H. Parker (No. 2), filed in the office of the Clerk of this Court, be and the same hereby are dismissed without costs to either party as against the other, and it is further

Ordered, that the foregoing shall be without prejudice to the rights of the said claimants, and each of them, to file within 10 days
133 from the entry hereof a proof of claim with the Referee as general creditors for the amount due him or them herein; and it is further

Ordered, that each and all of the above named claimants, and each and every other individual, firm and corporation be and they hereby are, and each of them hereby is enjoined and foreclosed from making, asserting, or prosecuting, in law or in equity, any claim to the cash, stocks, bonds and securities, the subject of this proceeding; and it is further

Ordered, that after the payments aforesaid the residue and remainder of the funds, the subject of this proceeding, be paid by the trustee to himself for the benefit of the general estate herein.

Dated, New York, April 20th, 1911.

LEARNED HAND.

Report of John J. Townsend, Esq., Special Master.

Claim of the First National Bank of Princeton, Illinois, Represented by Thorndike Saunders, Attorney, 27 William Street, New York City.

This claim in reclamation was originally filed in the office of the Clerk, December 14, 1908.

My first report on the claim as Special Master was filed in the office of the Clerk, May 28, 1909.

134 The claim is before me for a rehearing, pursuant to the decision of the Circuit Court of Appeals In re A. O. Brown & Co. ex parte The First National Bank of Princeton, Illinois, 23 A. B. R., 423. In that decision the Court, in substance, held that the pur-

chase price of the stocks paid by the claimant could not be reclaimed, but that the claimant could follow the proceeds of its converted securities (page 246).

Accordingly, at the present hearing, the petition in reclamation was amended (S. M., page 21), so as to allege that the bankrupts' estate or some part of it, to wit, the moneys on deposit in the bank to the credit of the said bankrupts, including proceeds of claimant's 20 shares of Atchison common and 25 shares of Missouri Pacific, and other properties, have come into the possession of the Receiver herein.

The claimant offered in evidence the printed — on its petition to review, with the exception of the clause at folio 41, beginning, "It is conceded."

From this record and the testimony taken at the present hearing the following facts appear:

On August 13, 1908, A. O. Brown & Co. purchased for the claimant bank 20 shares of Atchison common at 89 $\frac{1}{4}$, having received on August 12, 1908, the claimant's check for \$1,787.50 deposited in the account of A. O. Brown & Co. in the Commercial National Bank of Chicago.

On August 18, 1908, A. O. Brown & Co. purchased for the claimant 25 shares of Missouri Pacific at 56 or \$1,403.13, having received the day before the check of the claimant bank for \$1,403.13 deposited in the account of A. O. Brown & Co. in the Commercial National Bank of Chicago.

On the purchase of 20 shares of Atchison common, the 135 firm received Certificate X-171,502 for 10 shares and Certificate X-171,342 for 10 shares.

Certificate No. X-171,502 was delivered by the firm on August 13, 1908, to Carlisle, Mellick & Co., a firm of stock brokers in this city, and the latter's check to the order of A. O. Brown & Co. for \$857.50 was deposited in the Hanover National Bank in this city against "stocks borrowed" account.

Certificate No. X-171,342 was on August 13, 1908, delivered to De Coppet & Doremus, a firm of stock brokers in this city, against "stocks borrowed" account, and A. O. Brown & Co. received the latter firm's check for \$900, which check was deposited on the same day, August 13, 1908, in the Hanover National Bank.

These facts appear in the report of Suffern & Son, certified public accountants, made to Mr. Thorndike Saunders, attorney for the claimant bank, on March 16, 1910, to be found in extenso at minutes, page 23. I take this transaction to be differently stated, the same as that described at folio 32 of the printed record in the receiver's letter to the claimant bank dated October 24, 1908, or page 4 of the minutes attached to my report filed May 28, 1909.

The 25 shares of Missouri Pacific purchased for the claimant bank appear by Messrs. Suffern & Son's report to have been purchased on August 17, 1908, from De Coppet & Doremus, stock brokers, "on a balance" including this and additional purchases made through De Coppet & Doremus and delivered to A. O. Brown & Co., viz., 60 shares, represented by the certificates following: A-36,951 for 20

shares, A-15,326 for 20 shares, B-21,912 for 10 shares, and B-20,910 for 10 shares.

On the same day, August 17, 1908, A. O. Brown & Co. delivered Certificate A-36,951 for 20 shares to De Coppet & Doremus, against "stocks borrowed" account in order to close a sale made to De Coppet & Doremus on August 17, 1908, of 10 shares for the account of one Webster and 10 shares for the account of one Wright & Co. A. O. Brown & Co. received the check of De Coppet & Doremus for \$1,120 in return, deposited August 17, 1908, in their account in the National Bank of Commerce in this city.

The three remaining Missouri Pacific certificates for 40 shares in the aggregate, in which were claimant's remaining 5 shares, on Monday, August 24, 1908, the day before the general assignment, were delivered by the firm of De Coppet & Doremus against a sale on that date made for the No. 24 account of one Payne. In return A. O. Brown & Co. received De Coppet & Doremus' check "on balance" for \$49,290.56, which was deposited in the Hanover National Bank of this city. At 56 this check would include \$280 proceeds of claimant's 5 shares.

In the Hanover National Bank there was thus deposited as follows:

August 13, 1909, 20 shares.....	\$857.50
August 13, 1908, Atchison.....	900.
	<hr/>
	\$1,757.50
August 24, 1908, included in a check for \$49,290.56 proceeds of Missouri Pacific @ 56.....	280.
	<hr/>
	\$2,037.50

137 In the National Bank of Commerce, New York City, there was thus deposited:

August 17, 1908, 20 shares M. O. Pacific @ 56.....	1,120.
Aggregate claim.....	<hr/>
	\$3,157.50

The opening and closing balances in the Hanover National Bank on and after August 13 were largely in excess of deposits specified. The particulars appear in Exhibit 10 of March 18, 1910 (S. M., page 25), being account G. B. with Hanover National Bank in a book lettered "Bank No. 3, A. O. B. & Co.," Appendix I, page 66.

The testimony of Carse, an officer in the Hanover National Bank, taken in the chain of Schuyler, Chadwick & Burnham (Exhibit 31 of April 7, 1910, in this claim, S. M., page 46), is to the effect that the morning balance, on the books of the bank, on Monday, August 24, 1908, was \$130,867.16, which with deposits during the day of \$3,743,526.20, made an aggregate of \$3,874,393.36 against which, on the books of the bank were charged on the 24 drafts at \$3,686,213.19 leaving a balance at the close of business on Monday and at the opening of business on Tuesday, August 25, of \$6,180.17.

According to the same witness, on the books of the bank, on Tuesday, August 25, 1908, inclusive of an \$8,000 loan, there were deposits made of \$145,187.97, which added to the balance of \$6,180.17 made a total of \$151,367.24. The withdrawals were one check for \$146,600, certified in the forenoon of August 25, and sundry minor checks or charges.

138 The account was ultimately closed out by check to the order of the receiver at \$2,055.97 on September 5, 1908, after the credit back to A. O. Brown & Co. on August 26th of \$3,562.24 applied on August 25th, in reduction of loan, as appears on both sides of the account (Bank Exhibit 22, March 31, 1910).

The book lettered "Bank No. 3, A. O. B. & Co.," sheet account G. A. (Bank Exhibit 33, S. M., page 52), shows the morning and afternoon balances of A. O. Brown & Co. in the National Bank of Commerce of New York from the close of business August 17th, to and including the opening of business on Monday, August 24th, when the balance was \$21,988.36. These balances were always largely in excess of the deposit of \$1,120 mentioned as made August 17th.

According to the extract from the books of the National Bank of Commerce (Bank Exhibit 28 of March 31, 1910), the balance at the opening of business on August 24, 1908, was \$25,137.97, and at the close of business August 24, 1908, \$20,993.57. The extract shows the deposit on August 25th of one check for \$86.40, which with the morning balance of August 25th makes \$21,079.97, against which on August 25th five checks were charged, inclusive of one for \$10,000 and one for \$4,000, and the charge back of a check for \$5,800 drawn on the Hanover National Bank, deposited in the National Bank of Commerce on the 24th, but not paid. After these charges and other subsequent small charges, at the close of business August 29th there was a debit balance of \$2,506.55 against A. O. Brown & Co.

Bank Exhibit 29, April 7, 1910 (S. M., page 45) Sufferin & Son's report dated April 6, 1910, pages 6-7, shows that the check for \$10,000 on the National Bank of Commerce was drawn to the order of A. H. Combs & Co. and that the check for \$4,000 on that bank was drawn to the order of the Hanover National Bank, and deposited in the latter bank in A. O. Brown & Co.'s account; see also the deposit of the \$4,000 check on August 25th, appearing in the Hanover National Bank statement (Exhibit 22, March 31, 1910). It is this \$4,000 check which the claimant contend brings into the Hanover National Bank the claimant's money deposited in the National Bank of Commerce on August 17th.

Exhibit 12, March 18, 1910, being the trustee's petition to compromise his claim against A. H. Combs & Co., quoted at length at S. M., page 26, shows that this \$10,000 check was delivered in part payment of a balance of \$146,600 due to A. H. Combs & Co. on a sale by them to A. O. Brown & Co. on August 24th, of 4,300 shares of Reading, A. H. Combs & Co. at or about the same time securing a further cash payment from the account of A. O. Brown with the Hanover National Bank of \$146,600, which they obtained by de-

positing their own check for \$665,600 on the National Bank of Commerce. At or before this time, A. O. Brown & Co. also pledged certain securities with A. H. Combs & Co.

This transaction is further explained by testimony of A. H. Combs & Co. (pages 177-179) and of his son, H. B. Combs (pages 194, 197, 203-207), taken at the first meeting of creditors and here received as Exhibit 24, March 31, 1910.

Exhibit 25, March 31, 1910 (*supra*), shows that in his compromise the trustee received from A. H. Combs & Co., the balance of the pledged securities, so far as not sold by A. H. Combs & Co.

The proof also establishes that on August 24th, A. O. Brown & Co. bought from A. H. Combs & Co. 4,300 shares of Reading at \$124 or \$266,600, being the shares paid for in part by A. O. Brown & Co., as stated *supra*.

The loose leaf book "to deliver," sheet of August 24th (Exhibit 13 of March 18, 1910, S. M., pages 27, 34), and a letter from Newborg & Co., dated March 22, 1910 (Exhibit 19, March 24, 1910, S. M., page 34), establish that A. O. Brown & Co. delivered to the Newborg Co. 4,300 shares of Reading in specified certificates on August 24th against a payment of \$266,600, which from Exhibit 22, March 31, 1910—the statement of the Hanover National Bank—was deposited in that bank August 24, 1908.

This last mentioned exhibit shows that checks aggregating \$3,868,213.19 were charged on August 24, against A. O. Brown & Co. as paid on that day. A comparison of this exhibit with the report of Saffern & Son, dated April 6, 1910 (Exhibit 39 of April 7, 1910, S. M., page 46), makes it reasonably certain that these checks were for stocks delivered on that day to A. O. Brown & Co. The Trustee concedes (S. M., page 34) that a great number of shares were purchased on that day.

The Hanover National Bank statement (Exhibit 22, of March 31, 1910) shows deposits, on Monday August 24, 1908, inclusive of loans made by the Bank, of \$3,743,526.20.

The balance in Bank at the opening Tuesday, August 25, was, as stated, \$6,180.17, *supra*, page 18.

The balance at the opening, Monday, August 24, was as stated, \$130,867.16, *supra*, page 18.

141 The five loan slips (Exhibits 23, *a, b, c, d, e*, of March 31, 1910, S. M., page 39), show the following loans made by the Hanover National Bank to A. O. Brown & Co.

On August 24, 1908, a loan No. 1530 of \$50,000 secured by 500 Great Northern preferred. These securities were sold by the Bank on August 27, 1908, and a balance of \$18,002.50 paid by check to the Receiver, September 5, 1908.

On August 25, 1908, a loan No. 1546 of \$250,000, secured by 1000 Steel and 3000 Copper. These securities were sold by the Bank on August 27, 1908, and a balance of \$26,948.66 paid by check to the Receiver. This loan does not appear in the Bank Statement, Exhibit 22 of March 31, 1910.

Reference is also made to

Frelinghuysen vs. Nugent, 36 Fed. Rep., 229, at page 239,
approved in *Peters vs. Bain*, supra, page 693.

In re *Marsh*, 8 A. B. R., 576, 586, 588.

In re *Erie Railroad Co. vs. Dial*, 15 A. B. R., 559.

In re *Royen*, 16 A. B. R., 141, at bottom of page 143.

Smith vs. Motley, 17 A. B. R., 863, pages 865, 867.

In re *Brunsing Tolle & Postel*, 22 A. B. R., 129.

Boone Co. Nat'l Bank vs. Latimer, 57 Fed. Rep., 27.

In re *A. O. Brown & Co.*, 23 A. B. R., 423, page 426.

American Can Co. vs. Williams, 178 Fed. Rep., 420, 423-4.

In re *Stewart*, 178 Fed. Rep., 463, pages 470, 1, 5-77.

These cases sufficiently establish the rule stated.

The difficulty obviously is in the application of the rule, and in determining whether the particular facts in each case bring it within the operation of the rule.

111 The contention of the claimant is, in substance, that the testimony or data outlined above warrants the following findings of fact:

That the proceeds of the sale of the claimant's certificates have been traced as deposited in the account of the bankrupt firm in the Hanover National Bank on certain specified dates.

That thereafter down to the date of failure, the balance was not drawn down below the amount of such so-called trust deposits.

That the business in which the bankrupt firm was engaged was that of buying and selling securities, such as merchandise, and that their account in the Hanover National Bank was used for that purpose, and that the deposits or drafts appearing therein may reasonably be presumed to have been made or drawn for securities delivered by or received by the firm, as the case may be.

That in this manner the Bank balance was substantially entirely absorbed by the morning of the failure, Tuesday, August 25th; the payments cleared on Monday, the 24th, amounting to \$3,868,213.19 against deposits, inclusive of loans placed to the credit of the firm on that day, of \$3,743,562.20.

That on Monday, the 24th, and Tuesday, the 25th, collateral, consisting of securities presumably purchased in the ordinary course of business by the bankrupts through their Bank account as stated, were pledged by the Hanover National Bank, which collateral has since been sold by the Hanover National Bank, the surplus proceeds being returned to the Trustee, in addition to some unsold collateral.

That the foregoing establishes a mingling of the converted 115 moneys of the claimant bank in the mass of the estate and that part of such mass having been traced into the hands of the Hanover National Bank and subsequently returned into the hands of the Trustee, the claimant bank has an equitable lien thereon for the amount of its claim to which priority should be accorded by order of this Court.

The difficulty in my mind is this:

While the proof no doubt traces the proceeds of the certificates

received by A. O. Brown & Co. for the claimant and establishes that these proceeds were deposited in the firm's account in the Hanover National Bank on the dates specified, the question is, does this proof identify those proceeds with any part of the estate as the latter came into the hands of the Receiver or the Trustee so as to give the claimant an equitable charge prior to the rights of the other creditors under the rule referred to.

Judge Hand's decision—its third paragraph—made on the first report in this claim—points out that the proof must go farther than the mere receipt of the converted moneys, in order to bring about identification with or confusion in the general mass of the estate.

I call attention to the decision of the Circuit Court in *Peters vs. Bain*, supra, 133 U. S., 670, given at pages 678, 679, and the opinion of Fuller, C. J., in the same case, at page 694, which case is referred to in the case of *American Can Co. vs. Williams*, Recr. of the Fredonia Nat'l Bank, recently decided by the Court of Appeals in this Circuit, supra, 178 Fed. Rep., 420, and where the Court at page 423 writes as follows:

"It cannot be shown that property in the hands of a Receiver has been increased by Trust funds unless it is shown that they were converted into or commingled with it. If the plaintiff's contention be well founded, and to follow misappropriated funds, it is only necessary to show that the Receiver has, and that the Trustee had, assets, the rule is simply that a demand for such moneys is a preferred claim against any substantial estate. To adopt this view is to do away with all the equitable principles out of which the right to follow trust funds grew."

In this case, the Fredonia Bank, before the appointment of the Receiver, had made collections for the American Can Co., as to a part of the claim, but there was no proof at all connecting such collections with the assets of the Bank in the hands of the Receiver (page 423), and the Circuit Court of Appeals affirmed the Court below in denying the plaintiff's claim to that extent.

The difficulty in applying the rule appears in *Re Brunsing Tolle & Postal*, supra, 22 A. B. R., 129, pages 130-131, where the case was remitted to the Referee. This case is an instructive decision.

There was no such difficulty in *Re Royce*, supra, 16 A. B. R., 141, page 142, which dealt merely with a bank balance (greater than the \$120 deposited therein for safe keeping) which had come into the possession of the Trustee in bankruptcy; and there was no such difficulty in *Erie Railroad Co. vs. Dial*, supra, 15 A. B. R., 559, where the rubber of which the proceeds were reclaimed had been converted into a stock of tires, the larger part of which came into the possession of the Receiver or the Trustee. And *Boone Co. National Bank vs. Latimer*, supra, 67 Fed. Rep., 27, deals only with a bank balance, and the claim was confined by the Court to that balance; see bottom of page 29.

On the other side of the question, the following cases, *Smith vs. Motley*, supra, 17 A. B. R., 863, page 867, *Frelinghuysen vs. Nugent*, supra, 36 Fed. Rep., 229, quoted at length in *American Can Co. vs. Williams*, supra, 178 Fed. Rep., 420, page 424,

which latter case in turn is the subject of discussion in *Re Stewart*, supra, 178 Fed. Rep., 463, pages 476, 477, tend to uphold the contention of the claimants that the testimony here sufficiently establishes, as to the claimant's moneys, a conversion into or a mingling with the estate taken over from the Hanover National Bank by the Receiver.

I repeat that the difficulty in cases of this character lies in the application of the rule.

On given testimony different minds may well reach different conclusions.

On given testimony, the conclusion whether or not such a conversion into or mingling with the mass of an estate, in the possession of a Receiver or Trustee, has been established as will support a charge upon the mass in favor of a claimant, seems to me, in its ultimate expression, to be one really of law, rather than fact.

The testimony here warrants a finding, and so I find, that all the moneys in the Hanover National Bank on Monday the 24th, viz.: the opening balance which it may be presumed included the claimant's moneys and the moneys of similarly situated claimants (see tabulation appended to this report), the deposits of that day resulting from the sale of securities, the loans of that day made by the Hanover National Bank, whether secured or not by collateral, were

all applied to the purchase of a general stock or mass of different kinds of securities. This is evident from the refusal of the Bank to certify the check given to A. H. Combs & Co. for 4,300 shares of Peking bought from A. H. Combs & Co. by A. O. Brown & Co. and by the latter sold to and paid for by Newborg & Co. on the 24th.

As stated, the general mass or stock thus purchased consisted of many different kinds of securities, and I am not satisfied that the claimant has succeeded in identifying its moneys with the purchase of the securities pledged with the Hanover National Bank on Monday and Tuesday, to secure the five loans disclosed in the testimony, a portion of which securities or their proceeds constitute the fund now in possession of the Trustee.

The claimant's counsel contends that no such burden rests upon the claimant, and takes the position that identification with the purchase of a general miscellaneous stock is sufficient. This view seems to differ little from that rejected by the Court in *American Can Co. vs. Williams*, ubi supra; but see *Erie R. R. Co. vs. Dial*, ubi supra.

I am constrained, therefore, to the conclusion that — this investigation (permitted to the claimant under *In Re A. O. Brown Co.*, supra, 23 A. B. R., 423, page 426), the claimant has not made out a case entitling it to the order asked for.

I report accordingly that the Trustee is entitled to an order denying the claimant's petition in reclamation, without prejudice to the claimant's right to prove as a general creditor and to participate in any dividend already declared or hereafter to be declared.

149 Claim of William H. Simpson, Represented by Thorndike Saunders, Attorney, 27 William Street, New York City.

The claim in reclamation, which is for the proceeds of 10 shares of Atchison preferred, was originally filed in the office of the Clerk on January 11, 1909.

My first report as Special Master on this claim was filed in the office of the Clerk, May 28, 1909.

The claim is now before me for a rehearing by consent, after the decision of the Circuit Court of Appeals In Re A. O. Brown & Co, ex parte First National Bank of Princeton, Illinois, 23 A. B. R. 423.

At the present hearing (S. M. page 12), the concluding paragraph of the filed claim or petition was amended to read:

"That the bankrupts sold said stock and the proceeds of the same came into the Hanover National Bank and thence into the hands of the Receiver in bankruptcy."

The evidence attached to my first report establishes (S. M. page 7), that on August 6, 1908, A. O. Brown & Co. bought for the claimant and through their New York Office, 10 shares of Atchison preferred at 94, or \$942, paid for by him by a sale on that day of 28 shares of Atchison common.

The same evidence also establishes that the claimant never received the certificate for the 10 shares of Atchison preferred, and also the further fact that he was not indebted to the bankrupts at the date of the failure.

A report to the claimant's attorney by Messrs. Suffern & Son, public accountants, dated March 16, 1910 (received in evidence as Exhibit 8 of March 18, 1910, S. M. page 13), establishes that A. O. Brown & Co. received in New York against the purchase for the claimant a certificate number X-115852, that this particular certificate by transfer into certificate number X-120922 was delivered to one Bader of Chicago on August 19, 1908, against a purchase for Bader of 10 shares of Atchison preferred on August 14, 1908, paid for by him to the Chicago office. The report further shows that the certificate received against the Bader purchase number X-120884 was delivered by A. O. Brown & Co. on August 14, 1908, to Carlisle, Mellick & Co. against a sale made by A. O. Brown & Co. to them, in consequence of which delivery A. O. Brown & Co. received from Carlisle, Mellick & Co. the latter's check for \$945 deposited on the same day, August 14, 1908, in the Hanover National Bank.

From this point, the testimony is the same (S. M. page 19) as that in the matter of the claim of the First National Bank of Princeton, Ill., and I refer to my summary of such testimony *supra* at pages 18, et seq.

The testimony discloses no authority given by the claimant to A. O. Brown & Co. to sell or pledge the securities purchased for the claimant and paid for by him in full.

For the reasons given in the claim of the First National Bank of Princeton, Ill., *supra* pages 23 et seq., my conclusion is that the

Trustee is entitled to an order denying the claimant's petition in reclamation, without prejudice to the claimant's right to prove as a general creditor and to participate in any dividend already declared or hereafter to be declared.

151 Claim of Fred J. Bullen, Represented by Thorndike Saunders, Attorney, 27 William Street, New York City.

This claim or petition in reclamation, which is for the proceeds of 20 shares of People's Gas Stock, was filed in the office of the Clerk, December 14, 1908.

My first report as Special Master thereon was filed in the office of the Clerk May 28, 1909.

The claim is now before me for a rehearing by consent, after the decision of the Circuit Court of Appeals In Re A. O. Brown & Co. ex parte First National Bank of Princeton, Illinois, 23 A. B. R., 423.

At the present hearing (S. M. page 8), the second paragraph of the claim or petition was amended to read:

"That said shares were never delivered to your petitioner, but as your petitioner is informed and believes were sold by said bankrupts and the proceeds went into the possession of Charles E. Littlefield as Receiver in Bankruptcy."

The evidence attached to my first report establishes that on August 4, 1908, A. O. Brown & Co. received from the claimant in Chicago \$1,892.50 (S. M. page 12) and bought for the claimant on August 24, 1908, 20 shares of People's Gas at \$94.50, or \$1,890, the certificate for which was never delivered to him.

The claimant's Exhibit 2 (S. M. page 8), shows that at the date of failure, the claimant was not indebted to the firm.

At the present hearing (S. M. page 9), a report to the claimant's attorney made by Messrs. Suffern & Son, public accountants,

152 dated March 16, 1910 (received in evidence as Exhibit 1 of April 7, 1910, S. M. page 9), established that against the purchase so made, certificate A-32888 for 20 shares of People's Gas was received by A. O. Brown & Co. and by them on August 10, 1909, was delivered to Carlisle, Mellick & Co. against a sale made by them for another customer.

In consequence of this delivery, on the same date, August 10, 1908, A. O. Brown & Co. received Carlisle, Mellick & Co.'s check for \$1,900 deposited on that date in the Hanover National Bank.

From this point, the testimony is the same (S. M. page 9) as that in the matter of the claim of the First National Bank of Princeton, Illinois, and I refer to my summary of such testimony supra page 18, et seq.

The testimony discloses no authority given by the claimant to A. O. Brown & Co. to sell or pledge the securities purchased for the claimant and paid for by him in full.

For the reasons given in the claim of the First National Bank of Princeton, Ill., supra page 23 et seq., my conclusion is that the Trustee is entitled to an order denying the claimant's petition in

reclamation, without prejudice to the claimant's right to prove as a general creditor and to participate in any dividend already declared or hereafter to be declared.

That part of report of Special Master relating to the 50 G. N. O., the proceeds of which are included in claim of Samuel C. Scotten, on this appeal, represented by Thorndike Saunders, attorney, 27 William street, New York City.

The claim in reclamation, which is for the proceeds of 153 100 shares of U. S. Steel common and 200 shares of Great Northern Ore, was originally filed in the office of the Clerk, February 16, 1909.

My first report as Special Master on this claim was filed in the office of the clerk, May 28, 1909.

The claim is now before me for a rehearing, by consent, after the decision of the Circuit Court of Appeals In Re A. O. Brown & Co., ex parte First National Bank of Princeton, Illinois, 23 A. B. R., 423.

At the present hearing (S. M., page 8) the filed claim or petition was amended so as to allege that both the securities mentioned were held by the bankrupts as security for certain debt balances against the claimant less in amount than the market value of the securities, and that the securities were sold and disposed of by the bankrupts, and they became unable to deliver them to the petitioner, but that the proceeds thereof came into the hands of the Trustee in Bankruptcy.

The evidence attached to my first report, established that 100 shares of the Great Northern Ore formed the subject of a special deposit by the claimant with the bankrupt firm in their Chicago office in November, 1907, and were thereafter pledged with the Commercial National Bank of Chicago by A. O. Brown & Co. This item of the claimant's claim will be considered in connection with my report as Special Master on the claims against the fund of cash and securities received by the Receiver or Trustee from the Commercial National Bank of Chicago.

Exhibit F received at the first hearing (S. M., page 3) being the Receiver's liquidation of the account of the firm with the claimant, shows that the claimant was indebted to the firm at the date of failure \$7606.76, with interest from July 31, 1908, against 154 which the firm was carrying 100 shares of U. S. Steel and 200 shares of Great Northern Ore, inclusive of 100 shares of the latter before referred to. The exhibit shows that, crediting the claimant with these securities at their prices on August 25, 1908, the claimant was a creditor of the firm at that date at \$9,962.32.

As to the second 100 shares of Great Northern Ore, they were purchased by A. O. Brown & Co. for the claimant and carried in the ordinary trading account of stocks carried on a margin.

The same report also establishes the purchase for the claimant of another 50 shares of Great Northern Ore March 30, 1908, at 58 1/4 or \$2,918.75, and that against this purchase there was received a certificate No. B-6123, thereafter delivered on April 6, 1908, to

Keppler & Co. against a sale of 100 shares to the latter, for the account of one Dawson, A. O. Brown & Co. receiving from Keppler & Co. their check for \$5,550 deposited on the same day in the Hanover National Bank. Thus one-half of this check, or \$2,775, represented the proceeds of certificate No. B 6123.

Hanover Bank loan slip No. 1546 being a loan of \$250,000 made by the bank to A. O. Brown & Co. on August 25, 1908, was received in evidence (S. M., page 12). It is one of the five loan slips referred to *supra*, page 22, in the matter of the claim of the First National Bank of Princeton, Illinois, being a loan of \$250,000 secured by 1000 Steel and 3000 Copper.

In connection with the transaction last mentioned, and the deposit in the Hanover National Bank on April 6, 1908, of the proceeds of the claimant's certificate for 50 shares of Great Northern Ore, in considering this claim I have considered as before me, so far as material, the testimony in the matter of the claim of the First National Bank of Princeton, Illinois, and I refer to my summary of such testimony, *supra*, at pages 18, et seq.

My conclusions are:

The claimant has failed to trace the proceeds of the certificate B-6123 for 50 shares of Great Northern Ore. These proceeds were \$2,775, or one-half of the \$5,550 deposited in the Hanover National Bank, April 6, 1908. On this branch of the case, I refer to my decision in the matter of the claim of the First National Bank of Princeton, Illinois, *supra*, at page 23. Moreover, between April 6, 1908, and August 7, 1908, there is no proof as to the bank balance.

It follows from the foregoing, that the Trustee is entitled to an order denying the claimant's petition in reclamation, so far as it affects the so-called Hanover National Bank fund; without prejudice to any order that may be made on the petition so far as it affects the fund of cash or securities received by the Receiver or the Trustee from the Commercial National Bank of Chicago, and without prejudice to the claimant's right to prove as a general creditor and to participate in any dividend already declared or hereafter to be declared, the amount of such claim as a general creditor to be liquidated after the final order in the claimant's entire reclamation proceeding; and such liquidation to be made on the basis of the Receiver's liquidation account Exhibit F before referred to.

156 That Part of Report of Special Master Relating to 85 Ill.

Certs., the Proceeds of Which Are Included in the Claim of Scotten & Snyderacker, on This Appeal, Represented by Thorn-dike Saunders, Attorney, 27 William Street, New York City.

This claim in reclamation, which is for the proceeds of 200 shares of U. S. Steel common, 100 shares of Copper Range, and 85 Illinois Central Receipts, was originally filed in the office of the Clerk, February 16, 1909.

My first report as Special Master on this claim was filed in the office of the Clerk, May 28, 1909.

The claim is now before me for a rehearing, by consent, after the

decision of the Circuit Court of Appeals, *In re A. O. Brown & Co., ex parte First National Bank of Princeton, Illinois*, 23 A. B. R., 423.

At the present hearing (S. M., page 3) paragraph III, where it is alleged that the securities were sold and disposed of by the bankrupts so that they became unable to deliver them to the claimants, was amended by alleging that the proceeds of the securities came to the Receiver in Bankruptcy.

The evidence attached to my first report (Exhibit B, S. M. page 1), being the Receiver's statement in liquidation, establishes that at the date of the failure, there was a debit balance against the claimants of about \$2,000, exclusive of interest, in favor of A. O. Brown & Co., against which A. O. Brown & Co. should have had on hand for the claimants, 200 shares of U. S. Steel, 100 shares of Copper Range, and 85 Illinois Central Receipts. The statement also shows that this debit balance, after crediting the claimants with the securities before mentioned, at their price as of August 25, 1908, was changed into a credit balance of \$12,270.89 in favor of the claimants.

A report to the claimant's attorney by Messrs. Suffern & Son, public accountants, dated March 16, 1910 (received in evidence as Exhibit 1 of April 7, 1910, S. M., page 4), confirms the debit balance just mentioned at \$2,401.03, and the credit balance just mentioned of \$12,270.89.

The same report shows that the claimant's account on July 11, 1908, was charged with the receipt of 85 Illinois Central Receipts, represented in certificate No. 2832 for 100 shares received from the company, and that this particular certificate on August 14, 1908, was delivered to J. S. Bache & Co. against a sale for a different account at 137½¢, and that A. O. Brown & Co. received the check of Bache & Co. on the same day for \$13,762.50 and on the same day deposited the check in the Hanover National Bank.

In connection with this deposit, the testimony in this claim (S. M., page 9) is the same from this point as that in the matter of the claim of the First National Bank of Princeton, Illinois, as to the daily balance in, the deposits in, and the drafts upon the account in the Hanover National Bank, and the loans made by the Hanover National Bank secured by collateral, etc.; and I refer to my summary of such testimony *supra*, at pages 18 et seq.

It will be noticed that loan slip No. 1546 for a loan of \$250,000 mentioned *supra*, page 21, was secured by 1000 Steel and 3000 Copper. The loan slip shows that the 1000 shares of Steel were sold by the Hanover National Bank at \$45.042.50, and the 3000 Copper at \$232.040.

The claimants have failed to trace the proceeds of their 85 Illinois Central Receipts represented in certificate No. 2832 deposited in the Hanover National Bank on August 14, 1908, and as to which the testimony is the same from that date as in the claim of the First National Bank of Princeton, Illinois. My reasons for this conclusion are the same as those assigned by me in the matter of the claim of the First National Bank of Princeton, Illinois, *supra*, at pages 23 et seq.

It follows from the foregoing, that the Trustee is entitled to an order denying the claimants' petition in reclamation, without prejudice to the claimants' right to prove as general creditors, and to participate in any dividend already declared or hereafter to be declared, the amount of such claim as general creditors to be liquidated on the basis of the Receiver's liquidation account Exhibit B, before mentioned, *supra*, page 42.

159 *That Part of Opinion of Hon. L. Hand, D. J., Relating to the Petitioner's Claims Included in This Appeal.*

United States District Court, Southern District of New York.

Re A. O. BROWN & COMPANY. The Fund on Deposit with the Hanover National Bank.

HAND, District Judge:

The distribution of this fund involves a great many different controversies which must be considered separately. I will take them up in the same order as the Master.

Ex Parte First National Bank of Princeton, Illinois.

Ex Parte William H. Simpson.

Ex Parte Frederick J. Bullen.

Ex Parte Samuel C. Scotten.

Ex Parte Scotten & Snyderacker.

These cases may all be treated as one, because the claimants all seek to make their claims good through the Hanover Bank account into which all their proceeds had gone before August 24th with one exception. On the morning of August 24th that account contained over \$130,000, and they had a lien on it for what money of theirs had gone into it, under *Knatchbull v. Hallett*, *supra*. On the morning of the 25th, the account contained about \$6200.

160 which was at once entirely withdrawn and the account reduced to nothing. The subsequent deposit of \$23,000 did not come from the funds of any of the claimants, and there is no presumption that it was intended to be in restoration of the claimants' funds. The claims here must therefore depend upon the transactions of the 24th. On that day over \$3,700,000 was deposited in the account, and over \$3,800,000 was withdrawn. The sums withdrawn were used for the most part in the purchase of stocks, the kind and amount of which are known, but the actual destination of which has not been, and cannot apparently be, shown.

On the 24th, the bankrupts paid one loan of \$200,000 from this bank account and obtained four loans each secured by specific collateral: one for \$80,000, one for \$50,000, one for \$250,000, one for \$8,000. The theory in regard to the payment of the note for \$200,000 is this: The agreement between the bankrupts and the bank gave the latter a general lien for all advances upon any collateral in its hands; therefore, the payment of the note by the mingled funds released the collateral *pro tanto* and the claimants may be subro-

gated to the surplus. The theory as to the collateral securing the four loans is this: That collateral was bought on the 24th by mingled funds. If the specific collateral was not bought, at least similar stocks were bought. Apparently the reasoning is, that the claimants may elect to regard all their money as going into any investment they choose and then if the stocks bought be mingled with other similar stock, they may elect again to regard the shares pledged as their shares.

There is, however, no theory which does not involve the hypothesis that up to the time of the supposed investment in the
161 stocks in question the fund had remained continuously equal to the amount of the claims. For example, although the claimants were all entitled to a lien to the amount of their claims upon the account at the opening of business on the 24th, yet if that account had been at any time that day reduced below that amount, subsequent deposits would not restore to the claimants their rights. There is no presumption of an intent to restore, and in the case at bar it would be an obvious fiction. Now on the 24th the transactions were enormous. Only a part of the stock purchased was of the kind pledged upon these four loans. Indeed there were drawn over \$400,000 of checks for other purposes before any check was drawn to pay for any stocks of the kind placed with the loans. It is true that the order of drawing the checks is in no sense the same as the order of presenting them, but the fact mentioned at least shows the possibility. The claimants therefore failed to prove that at the time of the alleged investments any of their money remained in the account, and that is a necessary step in tracing their money into any particular part of the estate. Moreover, even if they could follow any part of their funds into the stocks purchased that day, there is no way of telling whether the collateral pledged was delivered before the supposed purchases or after. If the collateral was pledged before, it would not do to call all the stock, that pledged as well as that free, a single fund upon which the claimants might have a lien. The mingling, which justifies such a rule, must be an actual and indistinguishable mixing into one fund.

Here that proof would require the claimant at least to show that at the time of each investment which they claim their money was in the bank—I mean at least that much money. The same

162 reasoning applies as to the payment of the \$200,000 note.

I need not therefore consider whether for the purposes of establishing a lien, the beneficiary may select any earlier withdrawal which went into an investment and which has been preserved. If the general mixed fund has been wholly dissipated, it has been held that he may do so, *Re Outway*, 1903, 2 ch. Div., 356, and that *Knachtbull vs. Hallett*, *supra*, does not limit him to a lien only where the result will be to prevent his following his money. That presupposes what has not been shown in this case; that is, that the supposed investment was in fact made from a mixed fund. The claimants have throughout assumed that throughout the 24th the fund remained large enough to cover their claims, and it is upon that rock that, in my judgment, their theory is wrecked. The report is confirmed.

Nor is there any presumption in the case that the fund always remained large enough to answer the trust moneys. The very first check drawn was greater than the opening balance and it is the merest speculation to assume what were the deposits or what the amount in the bank's account all day long. While the equity will follow funds as long as they can be traced, it always requires affirmative proof by the beneficiary that his money went into some specific thing.

Finally, therefore, the report is confirmed throughout. A docket fee and disbursements are allowed to Schuyler, Chadwick & Burnham.

Let an order pass as contained above.

(Signed)

L. H., U. S. D. J.

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Certificate of Clerk.

I, Thomas Alexander, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the foregoing printed pages contain a correct transcript of the record of the U. S. District Court for the Southern District of New York and of the proofs herein, so far as same, by written stipulation endorsed on the cover hereof and signed by the attorneys for the respective parties and filed with me, are agreed on and required on this appeal. And I further certify that I have inserted in this copy of the transcript signed by me the original citation.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed at the City of New York in the Southern District of New York this — day of September, in the year of our Lord one thousand nine hundred and eleven and of the independence of the United States the One hundred and thirty-sixth.

[SEAL.]

THOMAS ALEXANDER, *Clerk.*

Clerk's fees for certification, \$—.

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THOMAS ALEXANDER, *Clerk.*

We agree that parts of the Record and of the proofs as within printed constitute the transcript to be certified by the Clerk of U. S. District Court to the U. S. Circuit Court of Appeals, and we admit that we have received three printed copies of same.

HAYS, HERSHFIELD & WOLF,

For Appellees.

THORNDIKE SAUNDERS,

For Appellants.

(Endorsed:) Filed Sept. 19th, 1911.

165 United States Circuit Court of Appeals for the Second Circuit,
October Term, 1911.

No. 127.

In the Matter of ALBERT O. BROWN et al., Bankrupts; THE FIRST
NATIONAL BANK OF PRINCETON, ILL., et al., Appellants.

Appeal from the District Court of the United States for the Southern
District of New York.

Argued December 15, 1911: Decided January 8, 1912.

Before Lacombe, Coxe, and Noyes, Circuit Judges.

This cause comes here upon five separate petitions to revise an order of the district court, Southern District of New York, dismissing the claims in reclamation of the several petitioners. These five petitioners, viz.: The First National Bank, W. H. Simpson, E. J. Bullen, S. C. Scotten, and Scotten & Snyderaker have no community of interest, the claim of each is separate from and, in a sense, adverse to all the others. The five claims are presented together because they are of the same general character, are made the same fund, and the claimants are represented by the same counsel.

LACOMBE, C. J.:

A claim of the Princeton Bank originating in the transactions here recited was considered by this court in *re Brown* 175 F. R. 769.

166 On August 13th, 1908, the bankrupts, A. O. Brown & Co., stockbrokers, received from the Princeton Bank \$1,787.50 for the purchase—being the full purchase price—of twenty (20) shares Atchison, Topeka and Santa Fe R. R. Co. These shares were forthwith purchased by the brokers, but were shortly thereafter converted to their own use. On August 18th, the brokers received from the bank \$1,403.13, the full purchase price of 25 shares of Missouri Pacific, which was also bought and subsequently converted by the brokers. Bankruptcy ensued on August 25th, 1908, about noon, and upon learning of the conversion the bank undertook to rescind the whole transaction and to follow the purchase price as a trust fund. This we held it could not do, for reasons stated but we also held that it might follow the proceeds of the converted stock as a trust fund, if it could do so by satisfactory proof. The first of these proceedings is concerned with the bank's attempt to trace these proceeds. It is sufficient now to say that the other four claims are of a similar character, for stocks the property of the several claimants which were converted by Brown & Co. before bankruptcy; they are for \$945, \$1,392.50, \$6,675 and \$12,270.89 respectively; total, \$21,783.39. Still another claimant, Schuyler & Co., whose stock was obtained from it by the bankrupts on August 24th, and by them converted, is undertaking to

trace its proceeds (\$9,600) into the same fund, a petition to revise an order made in its proceeding was argued at the last session of this court and decision herein is handed down herewith. From other petitions to revise we have learned that there were numerous other persons having similar claims.

Ten shares of the claimant's Atchison stock was sold to one broker for \$857.50, and ten shares to another broker for \$900, both transactions taking place August 13th; checks for these sums were on the same day deposited in the Hanover National Bank. Of the 25 shares Missouri Pacific 20 shares were sold to one broker on August 17th, and the proceeds, \$1,120, deposited in the National Bank of Commerce. The other 5 shares were sold to another broker on August 24th, and the proceeds, \$280, deposited on the same day in the Hanover Bank.

The Special Master finds that there remained continuously from August 17th to August 24th, in the Bank of Commerce, a balance largely in excess of \$1,120. The balance on the morning of 167 August 25th, plus a small deposit then made, amounted to \$21,079.97; this was exhausted by the payment of checks subsequently presented, leaving a debit balance against the bankrupts so that no money was received by the trustee from the Bank of Commerce account. If the \$1,120 of claimant's money was left in that bank it has been dissipated and can be traced no further. Among these checks was one to the order of the Hanover Bank, which was deposited in that bank on the 25th, in the amount of \$1,000. It is the theory of the claimant that instead of the proceeds of the 20 shares Missouri Pacific remaining in the Bank of Commerce where they were indisputably deposited, until they were dissipated by the extinction of the credits, they were transferred by the bankrupts from the Bank of Commerce to the Hanover, as part of this \$1,000. This seems a very tenuous presumption in the absence of any evidence to support it; the amounts are different, there is nothing to show that there was a sum of \$2,880 trust money of some sort, which with claimant's \$1,120 was being shifted by the bankrupts for some unexplained reason from one bank to another. As we said in *re McIntyre*, Grace's Appeal 185 F. R. 96, "While the doctrine of following trust funds has been much extended in the modern decisions, there has never been a departure in the Federal Courts from the principle that there must be some identification of the property sought to be charged with the trust funds." We have here a firm of brokers in failing circumstances, who have converted and sold the stocks of very many of their customers. It seems a violent presumption to assume that throughout their subsequent transactions with their banks they are continually manipulating their funds so as to keep the moneys they have misappropriated segregated and intact. So far as concerns the fund which came to the trustee as unexpended balance (\$2,055.97) of the bankrupts in their account with the Hanover Bank, the \$1,120 of this claimant's money has not been identified as constituting any part of it.

The deposits of proceeds of claimant's stock in the Hanover Bank were, as we have seen, \$1,757.50 on August 13, and \$280 on August

fore the banks would have paid themselves out of such collateral and the trustee in bankruptcy would not have obtained so much from them. The same court which decided *Smith v. Motley*, however, sub-

sequently held in *Board of Commissioners v. Strawn* 157

172 F. R. 49, that the mere fact that the misuse of a trust fund has gone to swell, in one form or another the general assets of a bankrupt is not enough to charge a lien on such assets; and that to impress a trust upon the property of a tort-feasor who has used the trust fund in his private affairs, it must be traced in its original shape or substituted form. We fully concur in this statement of the law. No doubt the individual whose property has been converted has a high equity and is entitled to certain well-settled presumptions, but we cannot assent to the proposition that he may trace his money into any specific fund or security merely by inferences based on presumptions without substantive testimony to sustain them. The burden of proof is on the claimant at the outset; it rests upon him at the close of the case. If he has not then upon the whole proof made clear the final resting place of his converted property or its substitute he cannot sustain his claim. In our opinion the Princeton Bank has not established a lien against the general assets nor against any particular asset, which came to the hands of the trustee in bankruptcy and his claim was properly dismissed.

It is not necessary to discuss the other four claims, which are not treated in detail in the brief. The facts are similar to those above recited and the conclusion is the same as to all.

The decree is affirmed.

Thorndike Saunders, for the Appellants.

Ralph Wolf, for the Appellee.

173 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court Rooms in the Post Office Building in the City of New York, on the 18th Day of January, One Thousand Nine Hundred and Twelve.

Present:

Hon. E. Henry Lacombe,

Hon. Alfred C. Coxe,

Hon. Walter C. Noyes, Circuit Judges.

In the Matter of ALBERT O. BROWN et al., Bankrupts; FIRST NATIONAL BANK OF PRINCETON, ILL., et al., Appellants.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and

decreed that the order of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

E. H. L.

A. C. C.

174 Endorsed: United States Circuit Court of Appeals, Second Circuit. In re A. O. Brown & Co, 1st Nat. Bank of Princeton, Appellant. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 18 1912. William Parkin, Clerk.

175

Petition of Appeal.

United States Circuit Court of Appeals for the Second Circuit.

In the Matter of ALBERT O. BROWN & O'RS, Bankrupts; In re HANOVER NATIONAL BANK FUND.

The intervening Petitioners in reclamation herein, to-wit, the First National Bank of Princeton, Illinois, William H. Simpson, Frederick J. Bullen, Samuel C. Scotten and Scotten & Snyder, severally, conceiving themselves aggrieved by the affirmance of the Orders of the District Court of the United States, entered on the 20th of April and the 26th day of May, 1911, in the office of the Clerk of that Court and by the errors set forth in their assignment of errors herewith filed, do hereby pray the Court for an order granting leave to appeal:

And that a transcript of the records and proceedings and papers on which said orders and said affirmance were made and entered or such parts of them as are pertinent to the said errors be duly made, authenticated and sent to the United States Supreme Court at Washington, District of Columbia.

Dated New York, Feb. 29, 1912.

THORNDIKE SAUNDERS,
Solicitor for Petitioners-Appellants,
27 William Street, New York City.

The foregoing appeal is hereby allowed.

E. HENRY LACOMBE, U. S. C. J.

176 (Endorsed:) United States Circuit Court of Appeals for the Second Circuit. In the Matter of Albert O. Brown & O'rs., Bankrupts, in re Hanover National Bank Fund. Petition on Appeal. Thorndike Saunders, Attorney for Appellants, 27 William Street, New York City. Received copy of within this first day of March 1912. Service of citation waived. Hays, Hershfield & Wolf, Att'ys for Trustee. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 2, 1912. William Parkin, clerk.

177 In re A. O. Brown et al., Bankrupts. (Hanover Nat. Bank Fund.)

Stipulated that the record to be certified to the Supreme Court of the United States is part of the record from the District Court heretofore filed in this Court from the beginning of said record to and including page 79 and also from and including page 115 to the end of said record, together with the stipulation and agreement that the Bank of Commerce balances to the credit of said Bankrupts, from the time of the deposit therein of claimed \$1120, up to the 29th day of August 1908, were, as stated in the Special Master's report. It is also stipulated that when the check for \$146,600, to A. H. Combs & Co. was certified by Hanover National Bank on the morning of August 25, 1908, the fund to the credit of bankrupts in their checking account was only equal to the amount of such check for \$146,600, and there was no excess then therein, over such sum; and further that the claims for proceeds of stocks converted by said bankrupts and deposited in said Hanover Bank to their credit and the appeals of said William H. Simpson, F. J. Bullen, Samuel C. Scotten and Scotten and Snyderacker, being practically in the same position as that of the First National Bank of Princeton, Illinois, claimant for \$3190.63, are to be governed by the determination of the results of the aforesaid appeal by said Bank.

Consented to February 27, 1912.

HAYS, HERSHFIELD & WOLF,

Attorneys for Trustee.

THORNDIKE SAUNDERS,

For Appellants.

178 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. In re A. O. Brown et al., Bankrupts (Hanover Nat. Bk fund). Stipulation as to record. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 2, 1912. William Parkin, Clerk.

179 *Assignment of Errors on Appeal.*

United States Circuit Court of Appeals, Second Circuit.

In the Matter of ALBERT O. BROWN & Ors., Bankrupts; In re HANOVER NATIONAL BANK FUND.

Now on the 29th day of February 1912, comes the First National Bank of Princeton, Illinois; William H. Simpson, Frederick J. Bullen, Samuel C. Scotten, and Scotten & Snyderacker, Claimants, and Appellants severally, by Thorndike Saunders, attorney for them and each of them, and each for himself alleges that the Order entered herein on the 24th day of January 1912, in respect of these Claimants is erroneous and against the rights of these Petitioners, Appellants, in matters following, to-wit:

First, In affirming the Order of the District Court, entered April 20, 1911, and the Order dated May 26, 1911, dismissing their sev-

eral petitions and denying motions for each to give further testimony in respect thereto.

Second. Deciding that the proceeds of Appellants' stocks converted by said Bankrupts and credited to them in the Commerce and the Hanover National Banks of New York had not been traced into property that came into the hands of the Trustee in said Bankruptcy.

Third. Omitting to decide

(a) That the proceeds of said stocks were credited in said Hanover Bank and there mingled with Bankrupts' other credits in their said account and so remained until applied altogether by offset at the New York Clearing House on or after the morning of the 25th of August 1908 in payment of checks drawn by said Bankrupts on said 24th of August against said blended funds.

(b) That said Bankrupts' checks so then paid had been delivered on the 24th August aforesaid in return for stocks some of which had been on said 24th August pledged with the said Bank as collateral for loans made on that day.

(c) That said pledges have been sold by said Bank on or after the 25th of August 1908 and resulted in a surplus of Fifty three thousand five hundred and ninety-seven and 56/100 dollars (\$53,597.56), together with some other collateral, which said money and collateral were, on the 5th of September 1908, paid and delivered by said Bank to the Receiver in said Bankruptcy, with \$2,055.97 balance of credit of 25th August.

Fourth. Affirming the Order aforesaid denying motion for leave to supply further testimony made upon affidavits verified by the Vice-President of said Bank and by the former chief accountant of said Bankrupts.

Fifth. Omitting to decide that identification of the specific shares bought and of the particular checks delivered out for same by Bankrupts and of the pledging of these particular shares, as shown in said motion papers, were relevant and material to the determination reached by the Circuit Court of Appeals.

Sixth. Omitting to decide that the time of the day when the loans of \$200,000., \$85,000., and of \$80,000., were credited, as shown in said motion, was relevant and material to the question as to whether any of claimants' money remained in the account at the time of the purchase of the stocks that were pledged as aforesaid.

Seventh. Omitting to decide that the checks against said credit, drawn August 24, 1908, and following the several checks of that date aggregating \$7,796.35, to-wit, beginning with the check \$237,314.17 and continuing in the order set forth in "Exhibit 22" (except the \$146,600 preceded "August 25th, \$795"), to-wit, seventy-one checks, were certified in the order set forth in said Exhibit and were delivered by bankrupts for securities including said pledged securities and that the same were certified, deposited and paid by offset through the Clearing House on the next day.

Dated February 29, 1912.

THORNDIKE SAUNDERS,

Attorney for Claimants, 27 William Street,
Borough of Manhattan, New York City.

182 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. In re A. O. Brown et al., Bankrupts (Hanover Nat. Bank fund). Assignment of Errors. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 2, 1912. William Parkin, Clerk.

183 American Surety Company of New York.

Capital and Surplus \$6,000,000.

38081.

Know all men by these presents, the First National Bank of Princeton, Illinois, William H. Simpson, Frederick J. Bullen, Samuel C. Scotten and Scotten & Snyder, as Principals, and the American Surety Company of New York, a corporation, as Surety, are held and firmly bound unto Charles E. Littlefield, Trustee in Bankruptcy for Albert O. Brown and others, in the full and just sum of Five Hundred Dollars (\$500.), to be paid to the said Charles E. Littlefield, as such Trustee, his certain attorney, successors or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Scaled with our seals and dated the 27th day of February, 1912.

Whereas, an order has been entered in the United States Circuit Court of Appeals, on the 26th day of January, 1912, "In the Matter of Albert O. Brown and others, Bankrupts. In re Hanover National Bank Fund," which, among other things, affirms the order of the District Court of the United States, For the Southern District of New York, entered on the 20th day of April, 1911, and the 26th day of May, 1911, respectively, and

Whereas, the said First National Bank of Princeton, Illinois, William H. Simpson, Frederick J. Bullen, Samuel C. Scotten and Scotten & Snyder have prosecuted an appeal from said order of the United States Circuit Court of Appeals to the Supreme Court of the United States, to reverse the same,

Now, therefore, the condition of this obligation is such, That if the said First National Bank of Princeton, Illinois, William H. Simpson, Frederick J. Bullen, Samuel C. Scotten and Scotten & Snyder shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, then this Obligation shall be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered in presence of:

THE FIRST NATL. BANK OF
PRINCETON, ILL., & ORS.
By THORNDIKE SAUNDERS, *Att'y.*

[L. S.]

AMERICAN SURETY COMPANY
OF NEW YORK.
By HORACE P. HOLLISTER,

Resident Vice-President.

Attest:

M. W. DIVINE,

Res. Ass't Secretary.

184 STATE OF NEW YORK,
County of New York, ss:

On this 27th day of February, 1912, before me personally appeared Horace P. Hollister, Resident Vice President of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say: that he resides in Mt. Vernon, N. Y., that he is the Resident Vice President of the American Surety Company of New York; the Corporation described in and which executed the above instrument; that he knows the corporate seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said Corporation, and that he signed his name thereto by like order; and that the liabilities of said Corporation do not exceed its assets as ascertained in the manner provided by law. And the said Horace P. Hollister, further said that he is acquainted with M. W. Divine, and knows him to be one of the Resident Assistant Secretaries of said Corporation; that the signature of said M. W. Divine, subscribed to the said instrument, is in the genuine handwriting of the said M. W. Divine, and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him the said Horace P. Hollister, Resident Vice President.

E. A. FARRELL,

[L. s.]

Notary Public, New York County.

Certificate filed in all counties.

185 STATE OF NEW YORK,
County of New York, ss:

M. W. Divine, being duly sworn, says: That he is an Resident Assistant Secretary of the American Surety Company of New York; that said Company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said Company, and is duly qualified to act as surety under such laws. That said Company has also duly complied with and is duly qualified to act as surety under the Act of Congress of August 13, 1894, entitled "An Act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said Company as rendered pursuant to section 4 of said Act of Congress; that said statement is true and that said American Surety Company of New York is worth more than \$6,000,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

M. W. DIVINE.

Subscribed and sworn before me this 27th day of Feb., 1912.

E. A. FARRELL, [L. s.]

Notary Public, New York County.

Certificate filed in all counties.

186

American Surety Company of New York.

Incorporated April 14, 1884.

General Offices, 100 Broadway.

Financial Statement, December 31, 1911.

Resources.

Real Estate.

Home Office Building and Land, unencumbered	\$3,000,000.00	
N. Y. City Water Front, unen- cumbered	166,047.91	
		\$3,166,047.91
Stocks and Bonds, Market Value.....		3,814,536.00
Cash in Banks and Offices.....		867,775.28
Premiums in Course of Collection.....		358,517.93
Accrued Interest and Rents.....		60,312.97
Guaranteed Mortgages		195,250.00
		<hr/> \$8,462,440.09

Liabilities.

Capital Stock	\$2,500,000.00
Surplus	3,706,986.52
Reserve for Re-Insurance.....	1,454,037.31
Reserve for Contingent Claims.....	728,865.54
Reserve for Contingent Expenses.....	30,000.00
Bills and Accounts Payable, not due.....	19,653.69
Premiums paid in advance.....	22,897.03
	<hr/> \$8,462,440.09

187 *Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.*

The first quarterly meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company, No. 100 Broadway, New York City, on Wednesday, January 17, 1912, at 12 o'clock noon.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the American Surety Company of New York.

"GENTLEMEN: The Committee appointed by the Executive Committee of this Company at their meeting held Tuesday, December 12, 1911, for the purpose of nominating officers of the Company,

* * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate * * *

Place.	Resident Vice Presidents.	Resident Assistant Secretaries.
New York, N. Y.	Richard Deming Horace P. Hollister Marshall L. Brower A. E. Cotterell Henry D. King	A. L. Adams Marshall L. Brower William H. Bishop Horace P. Hollister Jared F. Harrison A. E. Cotterell M. W. Divine

* * * * *

"Whereupon it was

"Resolved, that the Secretary be authorized to cast one ballot on behalf of the Trustees present for the officers, members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

* * * * *

"The following resolution was adopted:

"Resolved, that the Resident Vice Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary."

* * * * *

STATE OF NEW YORK,

County of New York, ss:

I, H. A. Reiss, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 19th day of January, 1912.

[Seal American Surety Company of New York.]

H. A. REISS,
Assistant Secretary.

188 (Endorsed:) Nat'l Bank of Princeton, Ill., William H. Simpson, Frederick J. Bullen, Samuel C. Scotten and Scotten & Snyder, Principals, and American Surety Company of New York, Surety, to Charles E. Littlefield, Trustee in Bankruptcy for Albert O. Brown and others. Bond for Appeal. Dated Feb'y 27, 1912. Received copy the first of March, 1912. Hays, Hershfield & Wolf, Att'ys for Trustee. Approved March 2d, 1912. E. Henry Lacombe, U. S. C. J. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 2, 1912. William Parkin, Clerk

189 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 188 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the Matter of Albert O. Brown et al., Bankrupts, First National Bank of Princeton, Ill. et al., Appellants, as the same remain of record and on file in my office, in accordance with the terms of stipulation contained herein.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 4th day of March, in the year of our Lord One Thousand Nine Hundred and twelve and of the Independence of the said United States the One Hundred and thirty-sixth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

190 *Citation.*

United States Circuit Court of Appeals for the Second Circuit,

In the Matter of ALBERT O. BROWN & ORS., Bankrupts; In re HAN-OVER NATIONAL BANK FUND.

The President of the United States of America to Charles E. Littlefield, Trustee in Bankruptcy herein:

You are hereby cited to appear in the United States Supreme Court, at the City of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to an appeal filed in the office of the Clerk of the Circuit Court of Appeals for the Second

STEE, ET AL.

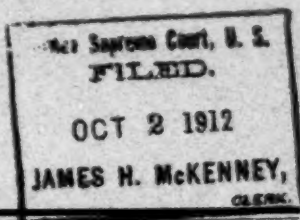
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United States
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E. U. S. C. J.

Appeals, Second
(Hanover Nat.
art of Appeals,
in, Clerk.

uit Court Ap-
ional Bank of
tlefield, trustee
arch 9th, 1912.



United States Supreme Court

October Term, 1912.

No. 572.

THE FIRST NATIONAL BANK OF
PRINCETON, ILL., et al.,

Appellants,

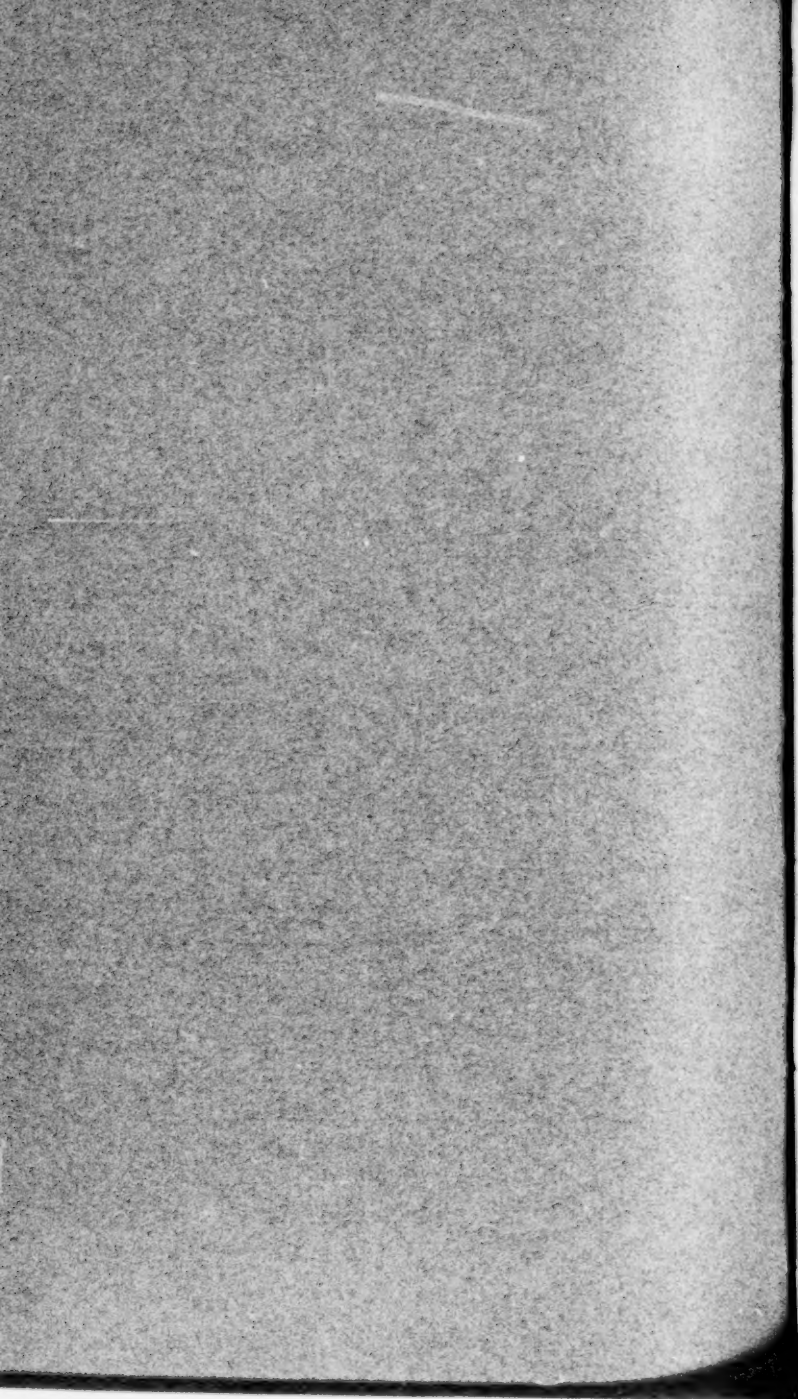
vs.

CHARLES E. LITTLEFIELD, Trustee in Bank-
ruptcy of Albert O. Brown and others, Bank-
rupt.

APPELLANTS' BRIEF.

THORNDIKE SAUNDERS,
Attorney for Appellants,
27 William Street,
New York City.

HAYS, HERSHFIELD & WOLF,
Attorneys for Appellees,
115 Broadway,
New York City.



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United States Supreme Court

THE FIRST NATIONAL BANK OF
PRINCETON, ILL., et al.,

Appellants,

vs.

CHARLES E. LITTLEFIELD, Trustee
in Bankruptcy of Albert O.
Brown & ors., Bankrupt.

Oct. Term,
1912. No. 572.

Appellants'
Brief.

Appeal from United States Circuit Court of Appeals for the Second Circuit (Rec., page 82).

Appellants are claimants against a fund exceeding \$90,000, in the hands of Appellee. By stipulation (Rec., page 83), F. J. Bullen's, Wm. H. Simpsons's, Sam'l C. Scotten's and Scotten & Snyder's appeals, all are included in and bound by the results of this Bank's appeal. Their claims aggregate \$20,501.80. The Bank's claim is \$3,190.63. There were other claims not included that do not exceed \$19,000.

The facts proved are that bankrupts, New York stockbrokers, were employed and paid all costs

and charges to buy and deliver to Appellants certain stocks. They bought but did not deliver to appellants said stocks. They sold the stocks to others and deposited the proceeds thereof to their own credit in the Hanover National Bank of New York, and in the National Bank of Commerce in New York, mingling same indiscriminately with other funds of said bankrupts. They failed on the 25th August at noon. These blendings occurred on the 13th, 17th, 24th and 25th August, 1908. This blended money was applied by the Hanover Nat. Bank on the 25th August, 1908, to the payment of some seventy checks drawn on the 24th August, 1908. These checks so satisfied were in main part delivered out on 24th August, for a miscellaneous body of stocks, some of which were, on said 24th and 25th August, 1908, pledged with the said Hanover Nat. Bank to secure loans then made and credited to said bankrupt in the account with said blended funds. These pledges being sold by the bank produced a surplus over the liens and charges of the specific loans of \$53,597.66, which, with other properties, was delivered to appellee, then Receiver, on the 5th September, 1908 (Rec., pages 8, 37, 64).

Said blended funds also on 25th August, 1908, paid by offset a check drawn against said funds by bankrupts on 24th August, 1908, for \$200,000. This was a loan that at opening of business on Aug. 24, 1908, the Hanover Bank had made and credited in said blended account. For this loan the bank received then no specific security. It held an agreement (Exh. 21, Rec., page 30) allowing it to apply any property of bankrupts that might come into its possession. At the time of the payment of this \$200,000, the bank held in its pos-

session the account in which the blended money was credited and also any value of the stocks so pledged for specific loans over and above said loans, interest and charges. The bank, as stated, applied the blended money and thus released the pledged stocks.

If claimant's proceeds had been segregated on the morning of Aug. 24th said surplus of \$53,517.64 would have been that much less than it was. If the \$200,000 had been left unsettled by check as aforesaid there would have been a deficit and no surplus, for reasons hereinafter stated.

After the argument in the District Court and before final decree, appellants moved for leave to supply further facts. No affidavit opposing was read. The motion was denied, and the final decree followed. This appeal seeks to review order and final decree and the affirmance (Rec., page 82).

In the following pages the facts of the motion are, in appropriate connection, stated, but are in parenthesis. Appellants think the evidence sufficient without them. They are reviewable here.

Appellants' "Assignment of Errors" (Rec., page 83), pointed to the dismissal and its affirmance, the decision that appellant's proceeds had not been traced into the hands of the Receiver-Trustee, emitting to decide the facts and particularly the continuance of the blended money till its application in a lump sum on the 25th August, 1908. Also the denial of the motion (Rec., page 84).

There was no conflict of testimony, no dispute as to the conversion, nor (until the Circuit Court of Appeals), any as to the presence of claimant's funds in the mingled money on August 24, 1908.

Differences in contentions exist as to the continuance of such mingled money during the 24th

August and the application of them on the 25th August. The Courts below holding (Rec., page 74), "Claimant's theories involve the hypothesis that up to the time of the supposed investment the fund remained continuously equal to the claims" "Over \$400,000 of checks for other purposes were drawn before any to pay for stock of the kind placed with the loans". "The order of drawing was not the same as the order of presentment" "but the fact shows the possibility" "claimants therefore failed to prove that their money was in the account at the time of investment, a necessary step" (and on page 75) "Nor is there any presumption in this case that the fund remained large enough to answer." "The very first check was greater than the opening balance." And in affirming (page 79) "That where it is a question of funds in a bank account, the *time* that the certification is made and debited is the significant time" and (page 78) "It might well be that any check would dissipate them." ("All is not well, I doubt some foul play" (Hamlet, Act. 1. Sc. 2), forgetting that "Injuria non praesumitur.")

A presumption of continued existence of the trust funds is founded on the facts proved of the mingling thereof on the 13th, 17th and 24th August, less than two weeks before the failure. And it is supported (Chamberlayne Evid., 1030, 1032, 1085) by the facts grouped "I"-IX following.

I. Big morning and evening balances for a long period anterior to the conversions (Exh. 32, Rec., page 39), and continuing afterwards and up to the 24th Aug., inclusive (Exh. 10, Rec., page 8), and the heavy credit footing on that morning \$21,956,058.60 (Rec., page 35). It is in pencil, i. e., a trailer and not a final footing and not only in-

forms the bank of the condition of the account, but in connection with the daily balances implies permanence and substantiality of the business as well as inclusion of the comparatively insignificant volume of trust fund.

Certainly, though a going business presupposes disbursements, it also implies receipts and bank deposits and credits, else it wouldn't go.

To a Stock Exchange business "*Omnia praesumuntur legitime facta donec probata in contrarium,*" with strong emphasis on the "*probata,*" applies. Its bank account is its life.

Good faith in business affairs is to be presumed (*Paup vs. Drew*, 10 How., U. S., 222).

II. These morning and evening daily balances were always heavily in excess of claimants' funds (*Rec.*, pages 61-62). They are not opposed by any evidence (*Chamberlayne Evid.*, §1085).

They are supported by the short time between them and by their constant and unvarying abundant sufficiency.

In *Smith vs. Mottley*, 150 F., 266, a period of ten days and absence of evidence of dissipation was held sufficient evidence in support.

In *Lincoln City vs. Morison*, 64 Nebr., 822, 826, 829, the absence of evidence of dissipation.

In *re Hicks*, 170 N. Y., 195, 200. Dissenting opinion of Werner, J., concurred in by Parker, C. J., and by Haight, J., that the estate was in part invested in funds in which trust money might have been placed.

III. Credit balance in bankrupt's account on morning of Aug. 24, 1908, was \$130,867.16, and in the National Bank of Commerce in N. Y., on that morning it was \$25,137.97, at evening it was \$24,-

993.57, and on morning of Aug. 25th it was \$21,079.97. Claimants' trust money in this latter bank was then \$1,120 (Rec., page 62). There were no other claims made. Bankrupts had also credit balances in other depositories.

IV. On morning of Aug. 24, 1908, the Hanover Nat. Bank in New York, credited to bankrupts account a loan of \$200,000. The bank received no specific security. It held Exh. 21 (Rec., pages 30, 45). But this was useless as security unless the business continued and sufficient property came from bankrupt to bank to provide the return of this loan.

The necessary inference is that the bank had faith in the stability of the business and the sufficiency of balances present and to come. If the credit balance had at once or later been dissipated it would have been a failure on the 24th inst. instead of on the 25th August.

V. The check that paid the \$200,000 was No. 38063 in a list of checks numbered 37992-38071, i. e., it was 71 checks from the beginning (Exh. 29, Rec., page 39).

There were twenty heavy deposits credited to that account on this 24th Aug. (Exh. 22, Cr. Side, page 35), five of these were, severally, larger in amount than this loan. The check was 49th in order of certification (Exh. 22, Rec., page 32).

The affidavit of Vice-President H. A. Carse, of the Hanover Nat. Bank, on the motion, shows that this check was among those that came up in a bunch about the close of business and was certified after 3 o'clock. All the debits in Exh. 22 were certified checks; the first 27 were before 3 o'clock and are, as on the lines of the certification book,

numbered in order of presentation, line 28 was not used, lines 29-71 were without order of presentation (Rec., page 53).

The stability of the business and big credit balances continued all day and the bank was the best judge of that.

VI. The law (U. S. R. S., Sec. 5208, and Act of 1882, Sec. 13, and liability to penalty involving all or part of five of Five thousand dollars and five years' imprisonment. Also the safety of bank's business and reputation necessarily governed its action. And prevented the payment or even certification of the check for \$237,314.17, against a credit balance \$130,867.16.

It cannot be fairly assumed that it was done. The check was the first one given, 'twas No. 37992 (Exh. 29, page 39), and the first one certified (Exh. 22, Rec., page 33 and page 7). It must not be assumed that it was certified before the credits were sufficiently large. The first credit was this \$200,000 (Exh. 1, id. Rec., page 28; Exh. 22 cr. side, Rec., page 35; Exh. 31, Rec., page 45).

Claimants' \$21,000 seems sufficiently protected there.

VII. The extensive character of bankrupt's business as shown by the heavy credits \$3,874,393.36 on 24th (Rec., pages 35, 46, 49). The trailer in pencil reads \$2,874,393.36, a mistake of 2 for 3—and also of place, it should be at the pencilled line above where it is, as the addition shows, (a vacant space, however, would account for that) without the fact set forth by Mr. Carse that the checks certified after 3 p. m. aggregated \$2,440,500 (Rec., page 53). These facts would probably convince any owner of \$21,000, then in bankrupt's

hands, knowing the facts, that his money was safe. Appellants, however did not know it.

VIII. The account itself shows that it was not balanced and offset as to its two sides and closed till after the close of business on the 24th and on the 25th (Exh. 22, Rec., pages 33-35).

Trailers or pencilled footings sufficient for informing the bank officers of its condition appear at intervals. As, opposite the item "August 24th 1500" (Exh. 22, Rec., page 33) is "21—825,191.44 in pencilling" the "21— is millions being in the cent column, and the credit side (top of page 35) shows another, i. e., "\$21,956,058.60 in pencil." The difference or opening balance of the 24th, \$130,867.16, in pencil in parenthesis upper middle of page of debits 33 printer's error of 807 instead of 867. In like manner trailer near the end of second column on page 33, "in pencil, \$3,868,213.19" is to be compared with \$3,874,393.36 credit side and should be opposite the pencilled line (Rec., page 35) shows the difference which notified the bank that the check \$146,600 could not then be certified, i. e., \$6,180.17 (Rec., pages 27, 54). There is no need for trailer following each debit. The account continues on *without* any mention of this difference of \$6,180.17. It says, "25th loan \$8,000," and so on, and the footing \$11,367.24, i. e., \$151,367.24 (and pencilled "June 9" should be Memo [long tail to the "o"])). Opposite \$145,187.07 is the addition of the \$145,187.07 and the understood \$6,180.17 difference, i. e., \$151,367.24 on debit side (Rec., page 33) "applied in reduction of loan \$3,562.25 \$151,367.24."

Exhibit 22 (Rec., pages 32-35) in connection with Exh. 29 (Rec., page 39, etc.) with the testi-

mony as to both, shows that what was included in the list of checks paid by the application of the credits—in a lump—could not have been presented for payment before the end of the day, 24th August:

2,2200 shares U. S. Steel by Check No. 38,037.
Certification No. 68.

800 shares U. S. Steel by Check No. 38,038. Certification No. 21.

2,300 shares U. S. Steel by Check No. 38,046.
Certification No. 39.

1,000 shares Amal. Cop. by Check No. 38,034.
Certification No. 60.

700 shares Amal. Cop. by Check No. 38,033.
Certification No. 25.

200 shares Amal. Cop. by Check No. 38,032.
Certification No. 23.

900 shares Amal. Cop. by Check No. 38,031.
Certification No. 24.

400 shares Amal. Cop. by Check No. 38,030.
Certification No. 35.

200 shares Amal. Cop. by Check No. 38,029.
Certification No. 19.

100 shares Amal. Cop. by Check No. 38,027.
Certification No. 9.

200 shares So. Pac. by Check No. 38,454. Certification No. 43.

1,200 shares Gt. Nor. pfd. by Check No. 38,040.
Certification No. 31.

500 shares Gt. Nor. pfd. by Check No. 38,058.
Certification No. 38.

300 shares N. Y. Central by Check No. 38,054.
Certification 43.

1,500 shares N. Y. Central by Check No. 38,042.
Certification No. 40.

500 shares N. Y. Central by Check No. 38,039.
Certification No. 6.

Considering that the checks issued on the 24th August commenced with No. 37,992 (Rec., page 39). All checks below No. 38,039 (at about the middle of the list, Rec. page 41) must have been issued late in the day (and as Mr. Carse swears all checks after 27th on Exh. 22 and following were certified after 3 p. m. and aggregated \$2,140,500 in amount, Rec., page 53).

Appellants have cited in the lot given above only those from which the pledged stocks that survive and by surplus went to the Receiver now the Trustee were taken. (There are many more that could be cited, but these given illustrate the matter.)

From the lot given above the securities for the specific loans \$250,000, \$80,000, \$50,000 and \$8,000 were taken. 100 So. Pac. which was specifically returned to the Receiver on the \$8,000 loan (Rec., pages 37, 48). 1,000 U. S. Steel and 3,000 Amal. Copper on loan \$1,546 for \$250,000 (Rec., pages 36, 37, 47).

Five hundred Gt. Northern pfd. in loan \$1,530 for \$50,000 (Rec., pages 36, 46).

Two hundred N. Y. Central, 110 Amal. Copper and 500 Gt. Northern pfd. on \$80,000 loan \$1,519 (Rec., page 36, 46).

Identity of these stocks pledged at 24th and 25th Aug., 1908 with those bought by blended funds on the same days was not questioned below, and in such case seems sufficiently established by identity of name and of possession on the 24th aforesaid (Chamberlayne Evid. §1187). The book containing record of the purchasers (Exh. 6, id) was as to such purchases offered in evidence, but was withdrawn,—except as to the number of the 4200 Rdg. (Rec., page 11). These were needed be-

cause of the \$1120 item (of which see hereinafter). But the language of the District Court opinion, "Any stocks of the kind placed with the loans" (Rec., page 74), while not absolutely implying doubt, induced appellants to show in their moving affidavits of Chief Accountant Bates and of Vice-President of Hanover Nat. Bank, the certificate numbers on some of them, and on the pledges bought on the 24th by mingled funds (Rec., pages 51-55).

500 Copper were bought of "Lipper" with check \$308,100, #38031; their certificate numbers were 76,938, 74,709, 64,821, 64,822, and these were sold as pledges (pages 51 & 54).

500 Gt. Nor. Pfd. bought by check # certificate numbers 56,921, 53,003, 52,891, 57,657, 57,702 (pages 51 & 55).

200 N. Y. Central bought by check No. 38,039 \$51,000; certificate numbers 140,727 and 140,533 (pages 51 & 55).

It seems appropriate to call attention to such facts as have bearing on the time when the account (Exh. 22) was written up. The unprecedented amount of business for that one firm, the large amount presented in bulk at the close of business of the 24th and certified, to amount of \$2,440,550 between 3 and 7 o'clock. The number of checks certified including those following 27th on Exh. 22 ie. (See pages 33, 34) 42 makes it difficult to imagine action of bookkeepers after 7 p. m. Besides the work was unfinished, till all certifications were debited, the \$146,600 check was to be provided for and certified as the trailer showed the funds promised by the certifications was so large as to leave practically nothing with which to meet that check. The loan of \$25,000 in progress of negotiation—heavy deposits promised—strong efforts on that day

and the next, to make the account good. Negotiation with the bank and with Combs (Rec., page 24-27); loans taken over; securities examined and declined, the account barely sufficient—

Surely the financial death of that firm was imminent. The partners talked it over on the 24th. Counsel was notified at 8 A. M. on morning of 25th; interviews with Hanover & Bank of Commerce officers and written suspension at noon (See pages 26, 27.)

Evidently this account (Exh. 22) was made up after the events which occurred probably after the failure at noon.

The debit item \$146,600 (Rec. page 33) was the last transaction before the failure (Rec. page 26, 83). It occurred immediately on the deposit of Combs & Co's check of \$66,600 (Rec. page 27), and of course after all credits including the deposit of \$17,300. For without the \$17,300 the account credit side would not be enough to warrant the certification of the check for \$146,600. Yet this \$17,300 is credited in the account after the \$66,600 is credited.

This making up of the account on the 25th was the time when the bank applied the credit altogether to the debits, those paid at Clearing House well as those paid at bank could not be offset till paid—were not due—(Merchants Bank vs. State Bank, 10 Wall, 604, 647, and 74 N. Y. Jordan vs. Nat. Shoe & L. Bank, and as hereinbefore appears, the unapplied balance of credit \$3,562.24 "to loan." The next day's (26th) crediting, back of \$356,225 and applying some of it to \$1,506.27 is immaterial. The bank had then sold or ascertained that it could sell for many thousands of dollars in excess of the

loans, the pledged certificates of stock, so the balance thus produced of \$2,055.97 was delivered to Receiver and the pledges left to pay the whole of the loan (Rec., page 33).

Then (on pages 34 and 36) appears the grand final balance both sides of account \$25,848,334.11.

Thus all that was left of the blended fund was the surplus in the pledges.

If the Hanover Bank had failed on the 25th the whole credit would, notwithstanding the certifications, have gone to the Receiver (Rector vs. City Deposit Co., 200 U. S., 405, and Rector vs. Commercial National, 200 U. S., 420, and People vs. St. Nicholas Bank, 77 Hun, 159).

Appellants' \$1,120 deposited on August 17th, 1908, in the National Bank of Commerce in New York is traced into the Hanover National Bank fund and applied with other credits to the debits of that account in the following manner:

In the credits in that Hanover National Bank account of August 24th, 1908 (Rec., page 35) are two of \$266,600 each, one is Miller & Co.'s check the other is Newborg & Co.'s, proceeds of sale to them of 4,300 Rdg. The certificates identified by numbers as the same bought on 24th of Combs & Co. (Rec., pages 23, 11, 27) and for which Combs got the checks \$120,000 No. 38,069 and \$146,600 No. 38071 (Rec., page 43). The first was certified on 24th August, 1908, the second (\$146,600) was paid on the 25th August after the deposit of enough to justify that act (Rec., pages 24, 26, 33). This \$146,600 was a deferred payment on the 4,300 Rdg. which had been sold and delivered for \$266,600, and this \$266,600 had been credited to bankrupts' account on the 24th August and had entered into the payments of the checks debited.

Among the deposits going to credit of bankrupts' account on August 25th all of which—except a small balance—was applied to the payment of that \$146,600, was one of \$66,600 from A. H. Combs & Co. and one of \$4,000 “transfer to Hanover Bank” (Rec., page 44) drawn by bankrupts on Bank of Commerce. This appears on page 44 of Record, above the entry of the other checks. Bankrupts gave to A. H. Combs & Co. their check for \$10,000 on the Bank of Commerce “*on account*” (Rec., page 44).

This check of \$10,000 therefore paid a part of the unpaid balance of \$146,600 due on the 4,300 Rdg. purchase above referred to and it with the check for “\$4,000 *transferred* to Hanover National Bank account” exhausted the Bank of Commerce balance of bankrupts (Rec., pages 62, 83) and with all other deposits in Hanover National Bank on 25th went to pay the balance due on said 4,300 Rdg. No other claims against the Bank of Commerce fund appear.

Claimants' \$1,120 in accord with a well-settled rule was in the blended balance so transferred and used in Hanover Bank payments on account of the pledged securities, etc.

The blended fund continuing over the 24th paid the loan of \$200,000 (Rec., page 43) by check of bankrupts No. 38,063. This was the forty-ninth check certified on the 24th, and the seventy-first issued. It was certified after 3 o'clock p. m. (Rec., pages 53, 32). The securities—value above the specific loans as well as the credit balance of the account could have been applied by the bank to that extent (Exh. 21, Rec., page 30). As stated before the bank applied the credits and thus re-

leased the values on the securities above the loans from the lien of Exh. 21.

At the time when claimants' funds were in the aggregate of mingled money applied to the payment of the checks certified and debited on August 24th including the check "No. 38,063 \$200,000 Hanover National Bank \$200,000" (Rec., page 43) the securities held by the bank for the loans and all the surplus above those loans as well as the balance in account constituted a special property of the bank. The bank did not apply this special property—they collected out of the credits and they even applied the balance in the credits \$3,562.24 to the loans. Claimants are subrogated to that special property. The mingled money was carried into it (In re Bruce, 19 A. B. R., 770; Skiff vs. Stoddard, 63 Conn., 198; United Nl. Bank vs. Tappan, 79 Atl., 946).

Assume to illustrate the situation and our claim, that the \$200,000 had not been so paid as it was, there would then have been at close of August 24th a credit balance in the account of \$206,180.17. In that case the \$146,600 check to A. H. Combs & Co. of the 24th would have been certified on that day so leaving to credit of account August 24th \$59,580.17. But Combs & Co. would in that event have omitted to deposit their \$66,600 on the 25th. Without this \$66,600 in Cr. of \$145,187.07 (Rec., page 35) there would have been but \$78,587.07 with which to pay the bank's \$200,000, and the deficiency would have exhausted the "surplus" of the securities held and more. Therefore it appears that the payment of the \$200,000 out of the blended money augmented the estate that came to the Receiver and Trustee, and which constitutes the Hanover National Bank fund (Cyc. "Trust," page 511 and 22).

IX. No earlier disposition or use of the blended fund or credits in the account than those prior to the failure and on the 25th August, 1908, is shown. It is held below that these debits in the account (Exh. 22) show such a "possibility and *therefore* claimants failed to prove that their funds remained in the account at the time of the purchase of any of the stock pledged" (Rec., page 74) and "It might well be that any check would have dissipated" (Rec., page 78), etc. "That the time the certification is made is the significant time" (Rec., page 79).

To this position there are several answers.

These appellants do not claim under the bankrupt's title but adversely to it, so they are not bound by bankrupts' acts.

Appellants' title is good till the bank has innocently without notice thereof paid away the money to an innocent party (Havana C. R. R. Co. vs. Knickerbocker Tr. Co., 198 N. Y., 422).

The equities between and as to the bank, the holders of certified checks and the depositing bankrupts have all been satisfied and what remains of the investment of these credits by the checks paid by offset, to wit, the "surplus" in hands of Trustee \$53,597.66 (Rec., page 64) is in same situation as if the account had been regularly closed and the loans satisfied and this surplus as a balance remained to the credit in the account.

Independently of these considerations, debits in the account don't mean payments. Certifications are debited and by custom are more frequent than payments at counter, particularly in such large amounts and in Clearing House Cities (Bolles Mod. Law of Banking, page 631).

And in view of the actual situation these debits can't be held to prove payments.

A certification of a check is not a payment (*Smith vs. Miller*, 43 N. Y., 171, 176).

It does not import that the funds on deposit are absolutely applied to the payment of the precise check (89 N. Y., 418, 426; *Clews vs. Bank of New York*).

It does not pay the account and discharge the debt (89 N. Y., 349, *Bills vs. Nat. Park Bank*).

It don't alter the title to the funds and turn it into a trust fund for the holder of the check (*Ital. Fruit & Impor. Co. vs. Penniman*, 61 Atl., 694).

It amounts to a statement that there are funds (not necessarily depositors') (*Merchant's Bank vs. State Bank*, 10 Wall., 604) that will be applied to pay the check when presented therefor properly endorsed and matured.

No credit is entered on bank accounts as to the holder; the only act of the bank is to mark the check and debit the drawers account and sometimes credit a certification account and always enter in a certification book on the line of number it has marked on the check.

No specific appropriation of funds. No lien on any fund. No title to any that can be enforced as such, and if the bank should fail before actual payment the check holder of certification would rank only as a general creditor. The Trustee in Bankruptcy would be entitled to the entire credits irrespective of the certified checks.

Rector vs. City Deposit Co., 200 U. S., 405;

Rector vs. Commercial National Bank, id. 420.

People vs. St. Nicholas Bank, 77 Hun, 159, 174.

Certification may be withdrawn at any time before creditors of the parties have intervened. (*Marine Natl. Bank vs. City Nl. Bank*, 59 N. Y., 67, 75).

If the bank had *by mistake of fact* paid a certified check it could recover back the money (*Espy vs. Bank*, 18 Wall., 604).

By these certifications and debits nothing had been done on 24th to affect appellant's title, except the buying of the pledges that remain. Of these customs of certification, etc., the Courts take judicial notice (*Chamberlayne Evid.* §815, 825, 834; *U. S. vs. Heintze*, 161 F., 425).

In absence of *evidence* there is no presumption of dissipation (*Paup vs. Drew*, 10 How. U. S., 222 and *Lincoln, &c. vs. Morison*, 64 Nebr., 822, 826 829).

The difficulty of proving that checks drawn *preceded* the credits, is probably unsurmountable. It is, however, none of appellant's making.

Appellant's title to the funds in the account was gone on the application of them to the credits, all left to appellant is the proceeds of those credits in the hands of the trustee (*In re Oatway Law Rep. Ch.* 1903, Vol., 2 pages 356, 360).

Appellants (at Court below) cannot say how much of their money went into any of these securities or bills, or on which most of it went, or at what specific hour of the day it was so applied. They believe, however, that it is not incumbent upon them to do this

Cavin vs. Gleason, 105 N. Y., 262.

Smith vs. Tp. Au. Gres., 150 F., 257.

and no such requirement can be spelled out of the case cited of *Commissioners vs. Strawn* (157 F., 19, 51, 53, cited below *Rec.*, page 78).

In that case the complainant recovered all he could show as the product of the mingled fund. But was refused only the product of a fund subsequent to the *entire* disposal of that blended money and not connected with it.

Appellants have referred always in parenthesis to the facts presented in the motion for leave to supply additional evidence. They rely on authority *Erie R'way Co. vs. Dial*, 140 F., 689, 692, for precedent and for their right to bring these facts before the Court on *Central Trust Co. vs. Seasongood*, 130 U. S., 482, and on *Buckingham vs. McLean*, 13 How. U. S., 150, 151.

It is respectfully submitted that all the facts and all the inferences that can be fairly drawn from them harmonize with appellants theory.

Dated, Oct. 1st, 1912.

THORNDIKE SAUNDERS,
of Counsel with Appellants,
27 William St., New York City.



12

OFFICE SUPREME COURT, U. S.

FILED.

NOV 1 1912

JAMES H. McKENNEY,

CLERK.

United States Supreme Court.

October Term, 1912.

No. 572.

THE FIRST NATIONAL BANK OF PRINCETON, ILLI-
NOIS, *et al.*,

Appellants,

against

CHARLES E. LITTLEFIELD, Trustee in Bankruptcy of
ALBERT O. BROWN, *et al.*,

Appellee.

BRIEF FOR APPELLEE.

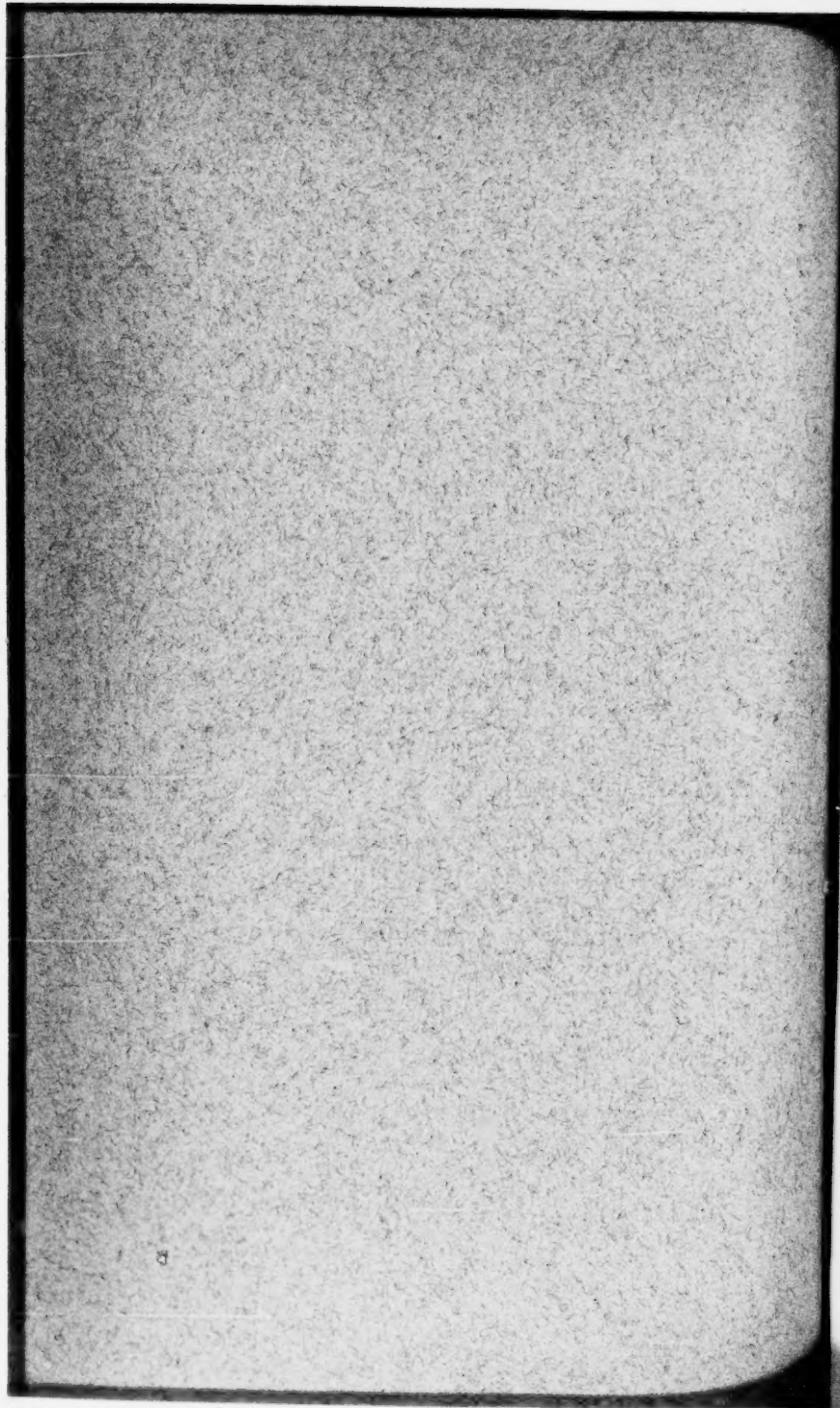
DANIEL P. HAYS,

Solicitor for Appellee,

115 Broadway,

Borough of Manhattan,

New York City.



United States Supreme Court,

OCTOBER TERM, 1912—No. 572.

THE FIRST NATIONAL BANK OF
PRINCETON, ILLINOIS, *et al.*,

Appellants,

against

CHARLES E. LITTLEFIELD, Trustee
in Bankruptcy of ALBERT
O. BROWN, *et al.*,

Appellee.

APPELLEE'S BRIEF.

Appellant bank is reclaiming against a fund received by the Receiver herein from the Hanover National Bank (fols. 2-5).

The facts are concisely and fairly stated in the opinions rendered herein by the lower Courts and the Special Master. We do not understand them to be disputed.

On August 13, 1908, the bankrupts received from the appellant \$1,787.50, the full purchase price of 20 shares Atchison, Topeka & Santa Fe Railroad Co. stock. On August 18, 1908, the bankrupts received from the appellant \$1,403.13, the full purchase price of 25 shares Missouri-Pacific Railroad Co. stock (fol. 29). The purchases were made. The stock thus bought was converted by the bankrupts by a sale thereof.

The Atchison stock was sold by the bankrupts on August 13, 1908, and the Missouri-Pacific stock on August 17, 1908. Upon such conversion the bankrupts received checks aggregating \$2,037.50 for such stocks; these checks were on August 13, 1908 and August 24, 1908 deposited by bankrupts in their account in the Hanover National Bank (fols. 11-13, 134-136).

At the close of business on August 24, 1908, the bankrupts' bank balance in the Hanover National Bank had dwindled to \$6,180.17. This was also, of course, the opening bank balance on August 25, 1908 (fol. 77). This \$6,180.17 was on August 25th at once entirely withdrawn and the account reduced to nothing by reason of the certification of a check to the order of A. H. Combs & Co. amounting to \$146,600. The certification of the Combs check entirely dissipated the bank balance (fol. 177).

Preceding the certification of the Combs check, certain deposits had been made in order to enable the bank to make the certification, and as soon as the balance was sufficient to authorize certification, the Combs check was certified. These were the first transactions on August 25th.

By reason of subsequent deposits to the credit of bankrupts on August 25th, after the certification of the Combs check, a small balance of \$2,055.97 was turned over to the Receiver (pages 332-33).

In the Court below, claimant expressly waived any rights that it might have to this fund of \$2,055.97, although, of course, it is disputed on this appeal that it had any rights thereto.

POINT I.

The burden is on claimant to show that its property or the proceeds thereof came into the possession of the trustee.

In re Brown, 185 Fed. R., 766.

In re McIntyre, 181 Fed. R., 960.

In re Brown, 175 Fed. R., 769.

American Can Co. v. Williams, 178 Fed. R., 320.

Board of Commrs. v. Strawn, 151 Fed. R., 49.

In Matter of Hicks, 170 N. Y., 195.

POINT II.

Neither claimant's property nor the proceeds thereof ever came into the possession of the trustee.

It has been shown that the proceeds of claimant's property were deposited in the Hanover Bank on or prior to August 24, 1908; that the closing bank balance on August 24, 1908, and the opening bank balance on August 25, 1908, was \$6,180.17, that this sum, together with other deposits was immediately used in the certification of the Combs check, and the bank balance reduced to nothing.

The funds of the claimant, therefore, deposited in the Hanover National Bank were withdrawn prior to the appointment of the Receiver. These facts put claimant out of Court.

The claimant must show that its fund remained on deposit continuously until the time of suspension and thus came into the possession of the Trustee.

Board of Commrs. v. Strawn, 157 Fed. R., 49.

And cases cited *supra* in Point I.

POINT III.

Appellants' theory is untenable.

Apparently, appellants' theory on this appeal is the same as that urged in the Court below, namely, that it may regard the withdrawals from the Hanover National Bank on August 24, 1908, as being withdrawals of its money, and the purchases of stock on that day, made therewith, as being its stock, and that upon the stocks thus purchased being mingled with other stocks, *it may elect again* to regard the stock remaining on hand, and which came into the possession of the Receiver, as its stock.

This theory is unsupported by any fact; it apparently rests merely on a presumption, or rather on a presumption based on two other presumptions.

POINT IV.

The decree of the Circuit Court of Appeals was right and should be affirmed, with costs.

Respectfully submitted,

DANIEL P. HAYS,
Solicitor for Appellee,
115 Broadway,
Borough of Manhattan,
City of New York.

[1699]

**FIRST NATIONAL BANK OF PRINCETON,
ILLINOIS *v.* LITTLEFIELD, TRUSTEE.**

**APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.**

No. 572. Submitted November 4, 1912.—Decided December 2, 1912.

The settled rule is that the concurrent action of two courts below upon questions of fact will not be disturbed except in case of manifest error.

226 U. S.

Opinion of the Court.

In this case appellant being claimant below had the burden of proof, and this court will not reverse the finding of both courts that the burden was not sustained.

193 Fed. Rep. 24, affirmed.

THE facts are stated in the opinion.

Mr. Thorndike Saunders for appellants.

Mr. Daniel P. Hays for appellee.

Memorandum opinion, by direction of the court, by
MR. CHIEF JUSTICE WHITE.

Albert O. Brown and others, members of a firm known as A. O. Brown & Company, stock brokers in New York City, were adjudicated bankrupts. The First National Bank of Princeton and four other claimants petitioned to have the receiver in bankruptcy return certain sums of money to which they asserted ownership, because the amounts claimed had been sent to the firm to buy shares of stock for account of the claimants and the stock had never been delivered to them. The special master to whom the matter was referred reported in favor of the claimants. The District Court, however, disapproved the conclusion of the master and rejected the claims. The Circuit Court of Appeals reversed. 175 Fed. Rep. 769. It was held that as the stock bought with the moneys of the claimants and for their account belonged to them they were entitled as owners, the stock having been wrongfully converted by the bankrupts, to take out of the bankrupt estate so much of the avails of their wrongfully converted stock as they might be able to trace into the hands of the receiver. Upon amended pleadings a further hearing was had before the special master, who reported against the claimants because it was found as a matter of fact that there was a failure to trace any of the proceeds of the converted

stock into the hands of the receiver. The report of the master was confirmed by the District Court (189 Fed. Rep. 432, 437), and the action of that court was in all respects affirmed by the Circuit Court of Appeals (193 Fed. Rep. 24). This appeal was then taken, and the claim of the Princeton Bank has been specially presented, under an agreement that the decision as to that claim will govern as to the others.

All the contentions relied upon in various forms simply assert that the master and the two courts erred in their appreciation of the facts. But the burden of proof was upon the claimant to establish its ownership of the fund, a burden which it cannot in reason be said was sustained in view of the concurrent adverse action of the master and the courts below. Indeed as the settled rule is that the concurrent action of two courts upon questions of fact will not be disturbed except in a case of manifest error, a condition which we are of the opinion after an examination of the record does not here obtain, it follows that the judgment below must be and it is

Affirmed.